THE COUNCIL OF STATE DEBATES

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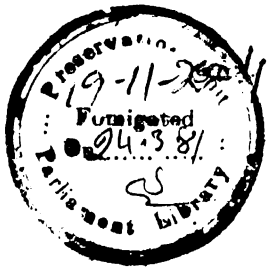
THIRD SESSION

OF THE

SECOND COUNCIL OF STATE, 1927



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COUNCIL OF STATE.

Wednesday, 7th September, 1927.

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

MEMBER SWORN:

The Honourable Sir Denys de Saumarez Bray, K.C.I.E., C.S.I., C.B.E., (Foreign Secretary).

QUESTION AND ANSWER.

* 107.

GUARDIAN FOR INDIAN CADETS AT SANDHURST.

108. THE HONOURABLE SIR PHIROZE SETHNA: (*a*) Will Government be pleased to state if Colonel Stooks is at present the guardian for Indian Cadets at Sandhurst?

(*b*) If the reply to (*a*) is in the affirmative, is his appointment made for any fixed period, and when will such period expire?

(*c*) If the reply to (*a*) is in the negative, what is the name of the officer who is at present such guardian?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF:

(*a*) Yes.

(*b*) His appointment is not for any fixed period.

(*c*) Does not arise.

THE HONOURABLE THE PRESIDENT: I would invite the attention of the Council to the fact that the Honourable Seth Govind Das gave notice of a question consisting of some eight parts which must have involved the department concerned in the expenditure of a good deal of time in the preparation of the answer. He does not even take the trouble of coming to the Council to put his question on the day on which it is down on the list of business.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: Could not somebody else ask this question in view of the fact that so much money has been spent in the preparation of its answer?

THE HONOURABLE THE PRESIDENT: The question could have been asked by any other Honourable Member, but no Honourable Member took the opportunity of asking it on behalf of the absentee Member.

* Not put at the meeting but the question and answer to it will be found at page 1040 of these proceedings.

QUESTION NOT PUT, OWING TO THE ABSENCE OF THE QUESTIONER, AND ANSWER TO THE SAME.

ACCEPTANCE BY THE GREAT INDIAN PENINSULA RAILWAY OF THE TENDER OF MESSRS. BRAITHWAITE AND COMPANY FOR REBUILDING THE NERBUDDA BRIDGE.

107. THE HONOURABLE SETH GOVIND DAS: (*a*) Will the Government be pleased to state if it is a fact that, in accepting the tender of Messrs. Braithwaite and Company by private agreement and not in the open market, the Great Indian Peninsula Railway authorities were largely influenced by the contractors undertaking to provide a new bridge over the Nerbudda between Shahpura and Bikrampur, by the 1st July 1927?

(*b*) Will the Government be pleased to state their reasons for not having called for tenders in the open market and also disclose the terms of the contract with Messrs. Braithwaite and Company for constructing this bridge?

(*c*) Is it a fact that no limit to the cost of this bridge was fixed by the railway company in their agreement with the contracting engineers?

(*d*) Will the Government be pleased to state if it is a fact that, after securing the acceptance of Messrs. Braithwaite and Company's tender, the contracting engineers have applied for and secured an extension of the time limit by twelve months on the score that they met with unexpected rocks or bad compressed sand in the borings down the bed of the river?

(*e*) Will the Government be pleased to state if the Great Indian Peninsula Railway authorities satisfied themselves before accepting Messrs. Braithwaite and Company's tender that the latter took reasonable steps to acquaint themselves with the nature of the sub-soil before they submitted their tender? If not, on what grounds did the railway authorities think fit to grant an extension of time for completion?

(*f*) Will the Government be pleased to state whether it is their intention after 1st July, 1927, to allow Braithwaite and Company to continue working for a premium on actual cost; if not, will the Government be pleased to state the terms on which Braithwaite and Company's services will be retained?

(*g*) Will the Government be pleased to state why the damaged bridge over the Nerbudda between Shahpura and Bikrampur was not restored and sold to the Public Works Department for the sum previously agreed upon, namely, six lacs of rupees?

(*h*) Will the Government be pleased to state if it is a fact that, after the washaway in September last, Messrs. Braithwaite and Company were allowed to utilise all the serviceable material of this old bridge in their dredging operations?

THE HONOURABLE SIR GEOFFREY CORBETT: (*a*) and (*b*). In view of the serious dislocation of traffic caused by the destruction of the Nerbudda Bridge and the urgent need of restoring communications at the earliest possible date the Government of India accepted the proposal of the Great Indian Peninsula Railway that the contract for rebuilding the bridge should be given to Messrs. Braithwaite and Company, a firm of contractors, who were already satisfactorily carrying out a number of railway contracts. The contractors offered to recon-

struct the bridge before the monsoon of 1927 under a heavy penalty, the new bridge to be of a design which could be carried out by using mainly material available from Messrs. Tatas' Works. It did not appear to the Railway Board that any arrangements could be made for the work which offered a better chance of restoring the bridge within that time. Nor did they consider that the delay which would be involved in calling for tenders would be justified, in the interests of the public.

The contract as finally entered into provides for payment of actual costs plus 10 per cent on the cost of the work in the piers and abutments and on the cost of erecting the steel girders at site ; there are items the cost of which could obviously not be calculated with great accuracy beforehand. Definite rates per ton were fixed for supplying the various steel structures.

(*c*) While no limiting sum was embodied in the contract the work had to be done under the supervision and control of the railway engineers and according to designs approved by them. It was calculated that on the approved design the total cost of the work under the contract would not exceed the estimate for the work which had been sanctioned by Government.

(*d*) Under the terms of the contract it was provided that if the work was finished by 31st July 1927 a bonus would be payable to the contractors of 10 per cent of the final payment for all the work in connection with the fabrication of the steel structures and 15 per cent for the balance of the work including erection but excluding the cost of plant. As they have not fulfilled this condition this bonus will not be payable. No extension beyond this date has been sanctioned for purposes of this bonus.

(*e*) Government are not aware of the nature of the discussions between the Great Indian Peninsula Railway administration and the contractors about the character of the sub-soil, but as the Honourable Member will see from my reply to (*d*) there was no question of granting an extension of time for completion.

(*f*) Government have no intention of terminating the present contract so long as the contractors abide by the conditions laid down in it.

(*g*) The damage caused by the flood to the steel work of the bridge was so extensive as to render it impossible for the girders to be reconstructed and made serviceable at any reasonable cost. An examination made of the piers and abutments showed that they were so badly shaken and damaged that they could not be repaired so as to be made safe and serviceable for a road bridge, and in fact orders had to be issued for them to be dismantled because there was a risk of their causing damage to the new bridge works. It was, therefore, clear that the remains of the bridge would be of no practical use to the local Government.

(*h*) Government have no information, but as the remains of the old bridge were not in a condition to be reconstructed, there would seem to be no reason against utilising them in the construction of the new bridge.

THE CRIMINAL LAW REPEALING AND AMENDING BILL.

THE HONOURABLE THE PRESIDENT : The Council will now resume discussion on the motion of the Honourable Mr. Ramadas Pantulu in regard to the Bill for the repeal of certain provisions of the Criminal Law Amendment Act.

THE HONOURABLE MR. G. A. NATESAN (Madras : Nominated Non-Official) : Sir, I feel I need not make any apology for intervening in this discussion. When the Government of India appointed the Repressive Laws Committee in 1921, I had the honour of being invited by that Committee to give evidence on behalf of the Madras Liberal League. I had also the privilege of taking part in a discussion upon this very question on the floor of this House in the year 1925. My Honourable colleagues will remember that in 1908, when this measure was introduced in the old Imperial Legislative Council, it was made clear that it was more or less a temporary measure. My Honourable friend Sir Maneckji Dadabhoy who took part in the discussion of this question the other day made the point very clear in the course of his observations. The Honourable Sir Maneckji Dadabhoy said on that occasion :

"But, my Lord, though I support this legislation, I must most distinctly state that I should not like to see it placed permanently on the Statute-book of our country and that I would urge that as soon as a normal state of things is restored in Bengal, and I trust that may not be far distant, Your Excellency's Government will set itself to repeal this measure ".

"I think it would be advisable and more popularly acceptable if the Honourable Mover of the Bill could see his way to insert a provision limiting the operation of the Act for a stated period only ".

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces Nominated Non-Official) : But, are these normal times ?

THE HONOURABLE MR. G. A. NATESAN : That question I am going to take up later on. I would also point out that the Maharaja of Darbhanga who sat in that Council also expressed the view that it would be extremely difficult for the Government to find out how far an association was lawful or unlawful. But the more important observation on that occasion came from a jurist of great renown and reputation, a man whose name is remembered unto this day and will be remembered for all time to come, I refer to the late Dr. Rash Behari Ghose. He pleaded for the inclusion of the element of knowledge in the provisions of the Act, thus indicating that it should be for the prosecution to prove in the first instance that a certain association was criminal and he urged that it was improper to lay the burden of proof on the association simply because the Government wanted to declare a certain association unlawful. Sir, the law was thus passed and it was in operation for a number of years. In 1921, after the introduction of the Montagu-Chelmsford reforms, when many of my countrymen were anxious to co-operate with the Government and do their best to work the reforms and show that the reforms were capable of being worked, in some instances and in some directions at least for the better government and for the constitutional advance of this country, they felt that the inauguration of the reforms should begin with a clean slate. In this very Council, my Honourable friend, the Right Honourable (then Mr.) Sastri introduced a Resolution that a Committee should be constituted to examine and report how far the repressive laws could be repealed. That Resolution was accepted unanimously by this House and a Committee was appointed. That Committee was constituted, consisting of officials and non-officials alike, and it was presided over by Dr. Sapru. Among the other members of the Committee there were men like Sir Sivaswamy Aiyer, Dr. Gour, Sir William Vincent and

Mr. Hammond, now one of the Governors of a Province in India. After hearing a volume of evidence both in favour and against, the Committee came to the conclusion and advised the Government that the repeal of Part II of the Criminal Law Amendment Act should be deferred for the present. I state the exact word because there is a certain amount of confusion as to what exactly the Committee did. It will not be correct or accurate to say that the Committee said it should be repealed. What they said was :—

" We advise the repeal of Part II of the Criminal Law Amendment Act should be deferred for the present ".

After all, the inference from that—an inference which was warranted by the other remarks in the Report—is that the Committee thought that in their opinion there was a reasonable case for repealing the Act. Mind, that this conclusion was arrived at by cross-examination of a number of witnesses among whom I was one. They simply had a doubt whether the Act could be repealed immediately. They said it could be repealed in course of time. They thought the time had not arrived then. The simple question now is whether the time has now arrived. We have now reached the third stage in the history of this question. In 1923, this question came up again before the Assembly. Mark you, it came up before the Assembly for the repeal of this clause altogether and there was a considerable amount of discussion and you, Sir, will perhaps be surprised to know that in this discussion several most eminent members of our Bar, those who have had great administrative experience, those who have been members of the executive Government in various provinces, men like Sir Sivaswamy Aiyer, Sir Chiman Lal Setalvad and others took part, and they voted for the repeal of this clause as a whole. When I say that men like Sir Sivaswamy Aiyer, Sir Chiman Lal Setalvad, Diwan Bahadur Rangachariyar, Diwan Bahadur Ramachandra Rao and others took part in it and voted for the repeal, I believe I make out a fair case that the question should now be considered upon its merits. From this again, we pass on to another stage when the question was debated here. Now the motion moved by my Honourable friend Mr. Ramadas is not for the repeal of Part II of the Criminal Law Amendment Act ; he only wants an enabling provision to give the right to an aggrieved person or association to appeal to the High Court. That, Sir, is a very simple question. We ought not to cloud the issue by raising various things which suggest themselves to the imagination of certain people. The question has been very rightly asked, has the time arrived for this step to be taken ? We have been told by official authorities that this provision has not been used in all provinces, that even when it has been used, it was used very sparingly. Now I may be allowed to say that from this statement a very fair inference in favour of the view that it should be repealed can be made. In the provinces of Bombay and Madras where the non-co-operation movement was also going on it has never been used ; and I am proud to say I belong to a province where, although the non-co-operation movement, if I may say so, was at its height particularly in the Telegu districts, the Government of my province did not think it necessary to apply this provision at all. We have been told that those who are in favour of this repeal should give some evidence as to where it has been abused. Now it seems to me that it is hardly fair that anyone should get up in this House and say, " Show me a single instance where it has been abused ". Whether this thing has been used properly or abused

[Mr. G. A. Natesan.]

could only be demonstrated if there was an outside authority besides the authority itself that applies that Act to say whether it has or has not been abused, for instance the High Court. If there had been some cases in which the High Court, say, had set aside the order of Government, one would be in a position to say there were so many cases— whether it was 10 or 5 or 3—in which the High Court set it aside. As it is, there has been no such opportunity, and the crux of the case, the gravamen of the charge on the popular side, is that once the District Magistrate or the Local Government declares that an association is an unlawful association you cannot have a word more ; there is no opportunity given to the person or to the association to prove that it is not an unlawful association or that he is not a member of an unlawful body. When this is the state of affairs, it seems to me that it is hardly fair that those who are in favour of the repeal of the Act should be asked to show instances of abuse. My case, with all due respect to the weight of the authority of those who sit on the opposite benches, is that it is hardly a fair argument to ask us to show an instance of abuse when you have given no opportunity, and the opportunity could only be given if an impartial tribunal like the High Court were there to see that the Act had been properly administered.

Sir, we are told even now that this is not the time for repealing the Act. I beg in all humility to say that that is not at all a correct view. On the other hand, I would go so far as to say that this is the most opportune moment for repealing it. In the first place, should the occasion arise, there is no fear that you have no other provisions of the Penal Code to exercise or put in to operation. Should such an unfortunate emergency arise, I believe there are sections of the Penal Code and also of the Conspiracy Act which warrant me in saying, on the legal advice I have had, that the Government will not be without proper powers to deal with the situation. If I may venture to say so, I do consult my legal friends on the correctness of my views and do sometimes get corrected by them ; and I have been told not only by lawyers but by those who have had something to do with the administration of this law and others like Members of the Executive Council, that, so far as certain sections of the Penal Code and the Conspiracy Act are concerned, they are quite enough to meet any untoward emergency that may arise. Not only that, Sir. The simple truth is that Government itself seems to think that it may be withdrawn, but that the time has not yet come. I ask in all fairness can anyone who has studied the political atmosphere at the present day say that this is not the time to repeal this Act ? If it is ever possible to repeal an Act like this, it is now. I am sorry that my Honourable friend Sir Maneckji Dadabhoy referred to the communal trouble. The communal trouble in all conscience raises great enough difficulties, but I do not think it should be brought up every moment, because every reference to it might perhaps have the effect of aggravating the evil which we are all most anxious to end. Barring that, however, my submission is, and I make it with all the earnestness and the responsibility I can command, that the present is perhaps the proper atmosphere to carry out the repeal of this Act. What was the state of the country when this Act was passed and for some years after ? There was much trouble with what is called the great non-co-operation movement. What has happened now ? The leader of that movement has more or less given up politics and is now engaged in the noble pursuit

of encouraging *Khaddar* of removing untouchability and promoting Hindu-Moslem unity which we have all so much at heart and upon which we have lately had such an eloquent and moving appeal from our present Viceroy. Many people, who once took non-co-operation seriously, are now ready and willing to co-operate with the Government. The President elect of the ensuing Congress, Dr. Ansari, the other day made it clear that, if people are anxious to enter the Councils they should work the reforms for what they are worth and try to exercise the responsibilities which are entrusted to them. What I ask is, could you conceive of a better atmosphere or a better opportunity for the Government to show a noble gesture which is so much needed just now and which will perhaps satisfy all parties. Speaking for myself, I am one of those who believe that it is for the good of this country that the British are in India ; and I believe that under British rule my country should advance to a stage when we shall be really self-governing and when we shall be as proud of our own country as the Englishman is of his. This Act, I say is one of the open sores, and the sooner you remove it, the better. If you do not remove it you will alienate from the Government, which has enough difficulties already, all that large band of Indians who are still standing by them who hope the reforms will prove a success, and who look forward to a larger measure of reforms because they believe it is to the good of the country that we should be associated with the British Government and that upon that our political salvation rests. I believe, Sir, I am voicing the feeling of all these people when I ask that these small sores, which are a constant source of irritation to people, who are at heart friends of the British Government, should not be allowed to remain. Remove them, and you will shut the mouths even of that small class of critics who are against the Government, because we can then say " Look here, the Criminal Law Amendment Act was introduced at a time of grave emergency but it has now been removed !" There will then be an atmosphere of peace and good will. I ask the Government and Honourable Members opposite to look at this question from the point of view I take. I do not want it to be said that measures of this kind are killed in this council and that all appeals to Government and the other members here to consider them on their merits are in vain. I do not myself take that view ; and it is because I feel that the reason, experience and the weight of authority of all people, who have had something to do with the administration of the country, those particularly who have been acting as members of the Executive Councils in various provinces, those who have had opportunities to tackle the problem at the time when the non-co-operation movement was at its height—it is because, I believe, that the experience and the weight of opinion of all these people who count is against the retention of this Act on the Statute-book that I gave to-day my unstinted support, and also because I feel that the task of Government will be made easier and the relations between the Government and the people better if a gesture of this description is now made by the Government.

THE HONOURABLE MR. H. G. HAIG (Home Secretary) : Sir, I rise on behalf of Government to oppose this motion. I should like to explain in the first place that it is only the pressure of essential business elsewhere that has prevented the Hon'ble the Home Member being here to oppose it in my place, and I would ask the Council to realise that the fact that I am standing here to voice the view of Government does not imply that Government do not attach great

[Mr. H. G. Haig.]

importance to this motion. On the contrary, the Government of India attach great importance to the retention of the powers which this Bill seeks to take away.

I notice, Sir, that my Honourable friend in introducing this Bill, and the Honourable Mr. Natesan, both laid some stress on what they suggested to be its moderate terms, and take certain credit to themselves for the moderation of their demands. Well, Sir, it is possible that this Bill started on its somewhat erratic course with the idea of putting forward only certain proposals which had been suggested in the previous discussions and which were directed mainly to introducing the High Court into the procedure ; but the point I wish to make is that this is not the Bill as it has reached this House. I have a great deal too much respect for the legal abilities of my Honourable friend, the Mover to believe that he regards with complete satisfaction the Bill as it stands ; but he must take the gift as he has received it from another place and accept the Bill with all its imperfections. My Honourable friend, Sir Maneckji Dadabhoy, on Monday developed a number of the objections to the Bill with a wealth of legal knowledge to which I cannot aspire ; but I wish to put in the first place a few points which strike an ordinary person, non-technical points, but at the same time legal points in this Bill which strike a non-technical mind. My Honourable friend the Mover when he was attacked on certain imperfections of the Bill or what we consider to be certain imperfections, suggested that it was unfair to take such points because non-official Members did not have the facilities for drafting that are at the disposal of the Government. On the particular point which he took, I think the Honourable the Law Member gave him a complete answer, but what I wish to emphasise is that no amount of drafting assistance can render intelligible a Bill on which the author himself has not made up his mind what he means ; and that, I think, is what was originally the matter with this Bill and not any technical defects in the drafting. As the Bill originally appeared in the Assembly the provision whereby the Local Government is authorised to declare an association to be unlawful remained in the Act. It has now been taken away. With its disappearance I suggest that the new section 16 becomes almost completely meaningless. What is the position ? In order to prove an offence under the Bill as it stands, it is necessary to show that a person is a member of an unlawful association. An unlawful association is defined simply and solely as one which encourages or aids persons to commit acts of violence, etc. In order to prove an offence under section 17 it is necessary to prove by evidence that the association of which a person is a member is an unlawful association within the terms of section 15 (*2*) (*a*). The Bill then proceeds to say that any person convicted may appeal to the High Court on the ground that the association in respect of which he was convicted was not an unlawful association. That is obviously the matter in dispute in the trial—obviously a matter on which an appeal must lie and on which the appeal will mainly be argued. It appears to me, Sir, that this provision is rather similar to saying that a person convicted of murder may appeal to the High Court on the ground that he did not kill the deceased. Well, Sir, that may be perfectly sound doctrine, but I do not understand why we should encumber the Statute-book with such glimpses of the obvious.

The main provision of this Bill is the repeal of section 15 (2) (*b*) and section 16. Those are the powers which enable the local Government to declare an association to be unlawful. Those are the powers whereby it is unnecessary to prove that the association is unlawful. Those are the powers which are attacked by my Honourable friend opposite. But to suggest that when you take away those powers you are doing anything moderate appears to me to be altogether misleading. The proposal is to repeal the kernel of the Act and to leave the Government merely with the husk. If the author of this Bill had any far-sighted views in introducing it—and I should be sorry to suggest that he had—I should suppose that his calculation was that if this Bill were passed Government would be left with only the tattered rags of the existing Act and might themselves take the initiative in repealing an Act which had ceased to be of any practical value. What I wish, therefore, to impress upon the House is that whatever the form in which this proposal has come up, in effect it is a proposal to deprive the Government of its existing powers in Part II of the Criminal Law Amendment Act. It is true that section 15 (2) (*a*) would remain, but, Sir, practically no use has been made of that section since the enactment of this Act in 1908, and it is I think clear why use is not made of it. In the special circumstances which may justify the employment of the provisions of this Act it must be exceedingly difficult to get the evidence which is necessary to prove under section 15 (2) (*a*) that one of these dangerous associations comes within its purview. In effect, therefore, the Bill sets out to deprive the executive of a power which at certain critical times—I will not put it higher than that—at certain critical times has been found to be an essential means of preserving order. On what grounds, Sir, is it proposed, against the strong protest of the responsible Government, to take away these powers ? In the first place reference is made to the authority of the Repressive Laws Committee. There has been some difference of opinion between my Honourable friend, the Mover and the Honourable Sir Maneckji Dadabhoy as to the precise terms in which the Repressive Laws Committee dealt with the matter. Well, Sir, I have looked up the Report and I think the difference between my two Honourable friends can be explained in this way. In one passage of the report it was said that many of the signatories hoped that it might be possible to repeal the Act at an early date. Well, Sir, I should conclude that the Repressive Laws Committee like many other Committees before and since, spoke to some extent with two voices. When it said that many of them hoped that the Act would be repealed at any early date, I think it is clear inference that the remainder of them did not hope for that.

And when we come to the substantive recommendation, to which all the Members subscribed, it is this :

" But we advise that the repeal of the Prevention of Seditious Meetings Act, 1911, and Part II of the Indian Criminal Law Amendment Act, 1908, should be deferred for the present. Their retention is necessary in view of recent occurrences and possible developments, which we cannot but regard with the gravest apprehension ".

That is their final recommendation.

Then, Sir, it is suggested—I am not sure if my Honourable friend the Mover actually made that point—but it has been suggested several times that the presence of this Act on the Statute-book is in some way a slur or reflection

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on the country. Surely it is taking too sensitive a view of the position to hold that the existence of an Act which is not being used is a slur on the country. After all, I would ask my friends to remember that the vast majority of the people of this country do not possess such an intimate knowledge of the law, as to know what is or what is not on the Statute-book, and they have not, in all probability, the smallest idea that this Act exists. The Act is a reserve power. We do not want to use it at the present moment, and I do not think it is reasonable to suggest that it should be repealed merely on grounds of that nature. But the main argument, as I understand, which my Honourable friends opposite advance, is that the situation is now so quiet that there is really no need to keep the Act. And my honourable friend Mr. Natesan made an appeal somewhat on those lines, that the atmosphere at present is quiet and friendly. Well, Sir, I should be very sorry to seem unsympathetic to such an appeal. But I wish to make it plain that it is not a question of the present atmosphere. Our case is not that at the present moment we are contemplating the use of this Act; our case is a different one. It is that if trouble were to occur—and who, Sir, can guarantee that it will not occur—it is most important not to have to wait until a situation has developed which will persuade a naturally reluctant Legislature to grant powers to stop such trouble. I think that point was put extremely well by the very Committee to which my Honourable friends refer so frequently, the Repressive Laws Committee. They said :

"Further, an obvious objection to a more complete acceptance of this principle"

—they were talking of the principle of repeal,—

"is that in allowing proof of the necessity for legislation to accumulate, even stronger measures than those now under consideration might eventually be required for the suppression of disorder. By the time public opinion had become sufficiently alarmed to demand or approve legislative action, the damage might be irretrievable."

That, Sir, seems to me to be an incontestable position. We know that the Legislature would naturally and properly be reluctant to re-introduce these measures once they have been repealed. We should have to get together an overwhelming case to put before the Legislature before we could hope, I am afraid, to convince my honourable friends opposite of the necessity of action.

Now, Sir, I can understand those who say that the powers conferred by this Act are of such a nature, that they are so revolting to my Honourable friend's instincts that they should never be granted under any circumstances. But I find it difficult to understand those who admit that under certain circumstances they may be required and yet want to repeal the Act now. It is like a man who in the hot weather under a cloudless sky throws away his waterproof, a very imprudent thing to do in a climate like Simla. That is an imprudence which an individual would not commit. But it is precisely that imprudence which some Honourable Members ask Government to commit in carrying through this Bill. A very good illustration of what I mean is to be found in the speech made by Sir Alexander Muddiman in this Council when the same issue was before it in February 1925. The position then was much the same; a Bill had

been passed by the Legislative Assembly, and it was being considered by this Council, and this is what Sir Alexander Muddiman said :

" When the Legislative Assembly was discussing this Bill, almost simultaneously there had arisen in a remote part of the Indian Empire a condition of things which made it necessary for the Local Government almost at that very moment to put this Act, which is very rarely used into force. A dangerous movement characterised by intimidation and boycott suddenly arose in certain districts in Burma, and the Government of His Excellency Sir Harcourt Butler, a Government which, I think, all those who know the head of it will agree, is not likely to act rashly, felt it necessary to use these very powers. It happened almost at the same time that the Assembly was saying that it was unnecessary to retain the Act, that the Government should not have these powers, that they are not good against anarchists, and there was no other use for them ; and a few days later the need arises and the power was wanted in Burma ".

That, Sir, I think, puts very clearly my point.

Well, Sir, what are the circumstances for which this Act is required, for it is admitted that this is an Act which is only required to be used very rarely ? Though those circumstances do not often arise, yet when they do arise, they are extremely dangerous, and it strikes me that the position which this Act is designed to meet is apt to recur. I was very much struck when I was looking through the old papers with the extraordinary similarity of the conditions to meet which this Act was enacted in 1908 and the conditions which subsequently confronted Government in the years 1921 and 1922, and I hope I shall not weary the Council unnecessarily if I just read out two passages which suggest this very marked similarity. This is what Sir Harvey Adamson said when introducing the Criminal Law Amendment Bill in 1908. He said :

"The information which we are constantly receiving from districts places it beyond doubt that the majority of these associations are maintained with the object of training youths in the use of arms and fitting them to take part in a general revolution that is hoped for. Outwardly professing to be devoted to such laudable objects as keeping order at meetings and helping pilgrims at festivals, they have been largely used for the forcible boycott of foreign goods, and for terrorising the community. The members often claim to travel free, and they have not hesitated to assault officers of steamer and railway companies who have refused them accommodation. In many cases such officers either from sympathy or from fear have refrained from enforcing payment of fares. They practise drill, engage in sham fights and parades, and encourage a martial spirit with an ultimate object which there is little attempt to conceal. These *samitis* have exercised a demoralising effect on the youth of the country, causing them to neglect education and to set at naught the authority of parents, until gradually the heads of the *samitis* have assumed complete control over the boys."

Well, now, compare that which was spoken in 1908 with the position described in the Report of this Committee, to which we rightly attach so much authority, the Repressive Laws Committee. This is their description of affairs in 1921. They say :

" Recently in Delhi it has been necessary to declare certain associations of volunteers unlawful under section 16 of the Act."

(the section which my Honourable friend wishes to repeal).

" We have carefully examined the circumstances which led to this action. The volunteer movement began with social service, but the adherents soon developed a definite tendency to interfere with the duties of the police and the liberty of the public. They then began to intimidate and terrorise the general body of the population. There was a tendency towards hooliganism. It has been proved that some of these associations

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resorted to violence, that their behaviour at railway stations and public meetings was objectionable and rowdy, that they obstructed the funeral of an honoured citizen and held a most undesirable demonstration at the house of another. They actively interfered with the elections by threats and picketting. There was every reason to believe that their activities, if left unchecked, would lead to serious disorder. The conclusion we have arrived at is that some of these volunteer associations in Delhi were seditious organisations, formed for the purpose of intimidating loyal citizens, and interfering illegally with the administration of the province."

Well, Sir, those are the circumstances to meet which this Act has on rare occasions to be employed. It is difficult to say that those conditions can be met by any means less drastic than those conferred by the Act. I suggest, Sir, that it would be throwing away the teachings of experience, if Government were now to part with those powers. Though the particular power given by this Act may be somewhat shocking to some of my Honourable friends, in that it is not open to the court to consider whether an association is or is not an unlawful one, at the same time the essential object of the Act is preventive and in its operation it is really much more mild than the measures which might have to be applied if this Act were not in force. When the Act was introduced this was emphasised and later when the Repressive Laws Committee went into the point, they also declared that one of the main objects of this Act was preventive. The Act is intended to detach those who are not really guilty, those who are carried away by their temporary emotions, to detach them from the dangers of an illegal movement. In actual operation, Sir, I claim that this Act is not very severe. My Honourable friend has also talked as if the Local Government would exercise its powers to declare associations unlawful in a purely arbitrary manner. He talked, I think, of "executive whim." Well, Sir, section 16 of the Act lays down that the Local Government must be of opinion that the association interferes or has for its object interference with the administration of the law or with the maintenance of law and order or that it constitutes a danger to the public peace. No Local Government, Sir, will come to any such conclusion without the most careful reflection and a full sense of its responsibility, and I do not think that my Honourable friends are able to point to a single instance in which a declaration has been made which the circumstances have really not justified. The Act has been employed very sparingly and when it has been employed its employment has been fully justified.

I need say no more on the main provisions of the Bill, which as I have already shown, are designed to take the substance out of Part II of the Criminal Law Amendment Act. But I must say a word about clause 4. When I first read clause 4 it came upon me with rather a shock of surprise. To my untutored mind, it did not seem to have any connection with the clauses that preceded it. My Honourable friend the Mover has explained why this somewhat unusual method of drafting was adopted. He has suggested that because the Government of India produce from time to time omnibus Bills for repealing and amending a number of uncontroversial measures, therefore it is justifiable to combine in one Bill these two exceedingly controversial and apparently unconnected proposals. The only connection which really appears to exist between them is that their common object is to weaken the hands of Government. I do not know whether that is a sufficient reason for combining them in one Bill. But there is some danger that this clause 4 may slip through without proper

consideration. The object of the clause clearly is to render ineffective the very important powers possessed by the Government under Bengal Regulation III and the corresponding Madras and Bombay Regulations. The object of giving these powers to the High Court is presumably that the High Court should summon persons dealt with under these Regulations before them and call upon the executive Government to prove their reasons for keeping them in detention. Well, if the executive Government were in a position to do that, they would not be making use of these Regulations. Therefore in effect, this clause 4 is intended to render the provisions of Bengal Regulation III and other Regulations entirely ineffective. My Honourable friend is apparently not satisfied with taking away powers because they are not at the moment being used. He now proposes to take away powers because they are being used. For, as Honourable members are well aware, we are using our powers under some of these Regulations. I do not wish to say anything more about Bengal Regulation III which we were discussing in this Council a few days ago. But, Sir, somewhat extensive use has had to be made of the similar Madras Regulation, after the Malabar rebellion, and I have not yet heard any substantial criticism of the use which the Madras Government thought fit to make in those very special and exceptional circumstances of the powers conferred by Madras Regulation II. If this clause 4 goes through, then a considerable number of persons held at present under the Madras Regulation II will be able to apply to the High Court. I do not know what the result will be; possibly the result will be that they will be set at liberty with serious results to the peace and order of that Presidency.

Again, Sir, my Honourable friend takes some credit to himself for permitting the executive Government still to employ those powers in respect of those who are not British subjects, and his object, as I understand it, was that we should not be deprived of any weapon which it may be necessary to use in fighting the insidious menace of communistic organisations outside India. Well, Sir, I do not think my Honourable friend can be fully acquainted with the methods which these organisations use. They do not generally send emissaries to India who are foreign subjects. Their methods are more subtle than that. They try to get hold of Indians to train them abroad in these special methods of propaganda and then to send them back to India to spread the poison here. Against those men these powers in clause 4 would be totally useless. I suggest, Sir, that this clause 4 is an ill-considered and irresponsible provision which has been tacked on to the Bill with no serious attempt to justify it.

In conclusion I would once more emphasise that the question before this Council is substantially the same as the question which was before the Council in February 1925 when they were asked to repeal Part II of the Criminal Law Amendment Act and when by a considerable majority they refused to do so. I would appeal to the Council to consider its responsibility in this matter and not to take away from the executive Government powers which after due deliberation they hold are still required.

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative): Sir, I wish to support this motion on five distinct grounds and I will go through them one by one. The first ground which I wish to urge is that it is only a matter of common courtesy that when the other House has passed a Bill with a large and overwhelming majority we should take it into consideration here.

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It is not for considering the details of the Bill nor the provisions of the Bill, but the provisions and details have been spoken to and therefore I cannot omit them. But my first ground is that it is merely a matter of common courtesy to take the details of the Bill into consideration. Why I say it is this. From the speeches that I have heard all the details get put together and one after the other they are being argued by a reference to authorities, by quotations and by reasons. Would it not be better that each detail was taken under its proper head, and then considered, argued and resolved upon. My first argument is that this Bill, as has been pointed out by many Honourable Members, is getting to be something in the nature of a hardy annual. It comes up over and over again and, as the other House passes it, we reject it, and that is the history of it. Well that is not good. We should, really speaking, try to understand the point of view from which the other House always passes it, and I have been taxing my mind to see what I could make out of it and I have made it out this way, that this Bill—not this Bill but the Act which it seeks to repeal—goes against the fundamentals of all jurisprudence of which I am aware. In the old Hindu law and in the whole of Hindu jurisprudence the principle is that the judiciary or the judicial courts merely pronounce a man to be guilty or not guilty. They merely return a verdict whether the man is guilty or not. Then it is for the Crown to award the punishment: that was the function of the Crown, of the King himself. The King used to sit down and get the Chief Justice to sit with him. The King would say "Your court has held this man guilty. What do you think I should give him by way of punishment?" and between them, the King and the Chief Justice would decide what punishment was to be awarded. Now this Bill really goes exactly the opposite way. It does it in this peculiar way, that the Local Government which represents the King should determine what assembly or what group of persons or what activity is unlawful, and then they make a declaration to that effect, which cannot be regarded as evidence in court. It is worse than an estoppel; it goes much further. You call upon a man "Were you a member of this assembly?" Every assembly keeps a register. There is the book and the accounts. Then you hand him over to the judiciary to give the punishment. That is exactly the opposite of what was done under the old Hindu law. The man may say to the Court "I am a member but the assembly is not unlawful." The Court says "We have nothing to do with that; the Local Government has said it is." All that remains is to award punishment. The joke of it is that you can go up to the High Court and say that the assembly or the group of which you are a member was not unlawful. While on this subject I may say there is a judgment of Sir Lawrence Jenkins which is very illuminating but unfortunately I could not get hold of it to-day. I may be convicted by a Magistrate and given six months, one year or two years. I go to the Chief Justice and say "I am a member of that assembly but that assembly is not unlawful." He says "What is the evidence on the record to show that this assembly is not unlawful." There is not a word on the record except the notification of Government. So this right of appeal which the Act gives is a joke and a cruel joke at that. It reminds me of a play in Shakespeare where a man is trying to tame his wife. He professes to take great care of her and looks specially after her diet. He refuses all kinds of food that is

offered and he then takes a small bit of dry bread and says " This is good for you, it is nutritious food " and the husband offers her that food and ultimately starves her into submission. That is what it is. You say you have got a right of appeal. It is a joke. The lawyers cannot speak about anything which is not on the record and the law court can decide anything only on the evidence which is on record. There is nothing to go on except the notification of the Local Government that the assembly is an unlawful assembly and the fact that the man is a member of that assembly. And this is called the right of appeal! It is a cruelty and ought not to be there. That is not what is done in English jurisprudence. There is the jury and there is the judge. The jury pronounces a man guilty or not, and the judge, representing the Government, awards the punishment. In this case, on the contrary, it is the Crown that pronounces a man guilty and the court has to award the punishment. That is against the whole idea of jurisprudence so far as I have understood it, and therefore it is that the other House takes up this question over and over again and it is sent to us here over and over again. And unfortunately what has happened in the past, though I hope it will not happen now is that we reject it summarily. Well, that is not the way to deal with it. Therefore I submit that this motion should be allowed and all the details of the Bill taken into consideration. The details can be argued later and if necessary amendments may be moved ; if the Government desire any undesirable portion of the Bill to be altered it can move amendments to that effect and the whole matter can be settled in that way.

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The third ground is that really speaking the Act which we seek to repeal proceeds on a wrong basis, and unfortunately it has been supported also on a wrong basis. What are the bases that are given ? It has been said that evidence cannot be put into Court because it will go out and it would be very unpleasant and it would not be right that all people should know of it ; it has also been said that the witnesses will be terrorised, and so on. I submit that this is a wrong excuse, because there is such a thing as trial in camera and you could hear cases of this kind after excluding the public and the newspapers ; you could order the newspapers not to publish the details of it and in that way the mischief could be counteracted as it is being done in courts in England ; there they say that divorce cases contain very many unsavoury details that ought not to be published. The Government could easily order the newspapers not to publish details of these trials and they could hold these trials in camera and all the evil effects of publicity could be eliminated. As to the argument of the witnesses being terrorised, I cannot understand that argument, except on the ground that the Government are unable to counteract the terror that is inspired by private individuals. I do not accept that proposition. After all, whatever the society, and however strong a group may be, it still cannot exercise greater influence than the executive Government itself with all its army of informers, its police and its disciplined army behind it. Do you think that private individuals will succeed when brought face to face with things of this kind ? They cannot. It appears to me, therefore, that this excuse is a very flimsy one ; they are not excuses that will hold or can stand anything like an examination.

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Let us proceed further. The Government say, "These are not the powers that we want to-day." It has been just now said by my Honourable friend over there. He compared the situation to a man who while walking in the sun threw away his waterproof and then the rain came on and he was thoroughly drenched. This provision, then, exists for the future. With the past we do not want to interfere because what has happened has happened; whether those circumstances necessitated the use of the law or did not necessitate its use I am not going to judge now; the Act was passed then and it was there. Objection to its repeal is taken on the ground that the Act has never been abused. I do not like the word "abuse", because it implies some intention and a wilful desire to go wrong. I do not use the word "abuse", but if it is said that no mistaken use of it was made, then I contradict that proposition. Mistaken use of it was made and I need not mention names, but people who are now Honourable Members of the other House were taken up and sent to jail. There was one person, whose name also I do not like to mention, who narrowly escaped being put into prison, who became soon afterwards an Honourable Member of the Executive Council of His Excellency the Viceroy and has since been given titles and made much of. So, mistaken use of this Act was made and mistakes there have been and probably admitted to be, because some of these persons were afterwards put on Committees like the Skeen Committee and most important work was entrusted to them. The Act may not have been abused in the sense of being wilfully perverted for all purposes; but I do maintain that mistakes were made and very serious mistakes too. The argument therefore that it has not been abused or not often used is a funny argument. If it has not been often used, why do you want to keep it for the future in the lumber room to be brought up rusty on some occasion and brushed up and brought into use? If it is not required now, why do you keep it on the plea that it will be required later on? Government certainly has got so many powers under the Conspiracy Act and other Acts and they can always convene this Legislature and get an Act passed when the occasion arises. After all we are responsible beings and if such a thing does happen and there is a dangerous situation and this Act is required, I will certainly vote if I am living then and if I am in this Council, that the Act be passed at once. I am not therefore disposed to attach any importance at all to these little excuses that have been put forward. What I attach importance to is the papers and authorities that have been cited up to this time, that a law of this kind which goes against the main principles of jurisprudence ought not to be on the permanent Statute-book. If necessity requires—and I do not pretend to know about the future—that an Act of this kind should be passed, it could be brought in as an exceptional thing and again turned out as soon as the necessity for it had gone. In this respect we should imitate, I think, what the surgeons do; they cut out the flesh when they perform an operation and they take very great care that they do not cut off even one-hundredth of an inch more than is necessary; and as soon as the operation is over they apply medicines to fill up the wound and to have the flesh that has been cut out replaced by healthy flesh. If there was this unfortunate necessity in 1908 and Government had to get this law, then the next duty of the Government is to try and wipe out that law and let the good flesh grow. You do not open the wound every now

and then to examine whether the healthy flesh is growing; if you do that, it will resemble the case of the monkey which opened its wound every time to see if it was all right and in the end the wound became a festering sore and the monkey died. Let not the Government open these things at every point and try to see whether the healthy flesh is growing or not. Take it that it is growing; take it that the thing is doing its work, that good government is doing its work; people are starting unity movements and such things and they are trying to improve the laws; they are trying to improve the constitution and so on; these healthy signs should be taken note of and I think a law of this kind, of such an exceptional nature, is liable to be misused—I do not say abused; but people will make mistakes and you could not punish them afterwards for making mistakes. The mistakes will have been made. This should be avoided as far as possible. No excuse should be left for a mistake of this kind being made, specially against the liberties of the people.

It has been said that this Bill combines two inconsistent things together—the right of appeal to the High Court and the right of the writ of *habeas corpus*; and my friend sitting to my left argued the matter. It was also argued in the other House and has been argued to-day at great length. It has been asked what is the nexus, what is the common portion of it? Honourable Members will probably remember that a few days ago we passed what my friends called an omnibus Act, by which we repealed a large number of superfluous and meaningless laws. What was the nexus in that connection? What was the common point? The common point was that it was said that all these laws were useless or superseded by other laws. Very good. The nexus here is the individual liberty, the safety of person, the safety of his respectability—that is the common portion in this question of *habeas corpus* as also the Act of 1908. That common thing being there I think the Bill rightly puts these things together. They are connected with the personal liberty of the subject and as such they could be brought in together and they certainly can be dealt with together. This *habeas corpus* is an old right, and a right of great importance. I do not mean to speak much about it now; lawyers know all about it—that it was devised in order that people who were languishing in jails under arbitrary orders and never had an opportunity of coming out, could be brought up before the High Court in order that the Judges might go into their case and might say that the persons ought to be released or dealt with according to law. It is a thing which has been done to prevent the executive from putting into jail without trial any man whom they disliked and who will be languishing there. For this the right of *habeas corpus* came in. I do not want to enter into the legal details of the matters nor the technicalities connected with it; but the fact is that we like the *habeas corpus* because it was originally devised to protect individual liberty and it is brought in here because it protects individual liberty. They said that it was too wide, and you include in it people who are not British Indians and so on. Very well, then, whoever drafted this Bill, was wise in excluding non-British subjects, and was right in laying down that Indian subjects alone should be included in it, and the others left out. Now, what is wrong in this? In fact, if I could I would adopt one phrase from the Roman law. The Romans are proud of their country, and they say "I am a Roman citizen." You see with what great force the claims of the Romans have been urged in Julius Cæsar. I want to raise the status of

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Indians in such a manner that we shall say "We are British subjects; therefore, nobody can arrest us without a process of law; nobody dare touch us without our being taken to court; nobody shall molest us until we have a remedy against them." I would like to have something of that kind, Sir. Therefore, I say with all the little strength that I possess that the proud status or our being citizens of the British Empire should be maintained intact, and no British subject should be liable to be arrested without the sanction of a court or without the process of law. For these reasons, I strongly support the motion brought forward by my Honourable friend.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I am afraid I cannot subscribe to the rather ingenious argument put forward by the previous speaker that because this Bill or any other Bill is passed in the other place, we should agree to a motion that it should be taken into consideration in this House out of courtesy. The motion for consideration is merely a phraseology, and I do not think that in connection with this Bill the Legislative Assembly can with fairness accuse this House of not having considered it. We had a pretty considerable debate on this measure last Monday. We have had some very interesting speeches to-day, and, as I have said before, the Council of State cannot fairly be accused of want of courtesy by the other House if we do not vote for the motion to take into consideration the measure which they have passed.

Now, Sir, I am not a lawyer, and I want to explain to the House my position in regard to this Bill. I have listened with great interest to the speech of my Honourable friend Mr. Ramadas Pantulu, and also to that of my Honourable friend Mr. Natesan. I have also listened with great interest to the speech of the Honourable Mr. Haig representing Government, and now the non-lawyers of this House have to come to a decision as to who is right. Now, Sir, the Honourable Mr. Ramadas Pantulu and the Honourable Mr. Natesan may be entirely right in their view that Part II of the Indian Criminal Law Amendment Act, 1908, should be repealed, in so far as their view affects Madras. My Honourable friend Sir Manmohandas Ramji might easily get up and put forward the view that, so far as Bombay is concerned, Part II of the Criminal Law Amendment Act should be repealed. Perhaps there is a good deal to be said for both those points of view, but I prefer to accept the view of the centre, that is the Government of India. I cannot imagine that my Honourable friends on my right know with any degree of certainty what is going on in other provinces, nor could I who come from Bombay pretend to have a knowledge as to what undercurrents may be spreading through the Punjab, the United Provinces or Bengal or Burma. Therefore, Sir, as an impartial listener to this debate, I feel that I must rely upon the view of the Central Government. My friends on my right say that this Act is not required, while the Government says it is required; surely, the Government, especially the Home Department, who must have an intimate knowledge of what is going on beneath the surface in this great country, are in a better position to decide this important matter than those who are outside the pale of the Home Department and merely give the views of the particular provinces from which they come.

The Honourable Mr. Natesan challenged the remarks I think, of Sir Maneckjee Dadabhoy, that it was unfair to call upon the Mover of this Bill to quote instances where Government had put into operation Part II of the Criminal Law Amendment Act with harshness. I cannot see the point of view of my Honourable friend Mr. Natesan. When a member gets up and says that a certain measure is harsh, surely it is not unreasonable to be called upon to cite instances. It is very easy to make wide sweeping statements, but surely such sweeping statements must be supported by facts.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras Non-Muhammadan): We are precluded from challenging the executive action in the courts. How can we adduce any instances of the misuse of its powers by the executive?

THE HONOURABLE SIR ARTHUR FROOM: As I said, I am quite ready to listen to the Madras point of view. But I contend that it is not the point of view of the whole of India.

Then again it was suggested that the time is now ripe for the repeal of Part II of the Criminal Law Amendment Act. Government have undertaken that when they consider that the time is ripe for the repeal of this Act, it will be repealed. Again I must put my faith in the Home Department of the Government as the best judges to decide as to whether the time has arrived for repealing this Act. And without altogether putting my faith in the Government blindly, I do not know how any Honourable Member of this House, as he picks up his daily newspaper and reads of anarchists here and anarchists there, of certain meetings that take place resulting in loss of life, could argue that the time has arrived for the repeal of Part II of the Criminal Law Amendment Act of 1908.

THE HONOURABLE SIR SANKARAN NAIR (Madras: Non-Muhammadan): Sir, my observations will be very brief on this motion. First, I shall address myself to the last clause of the Bill dealing with the writ of *habeas corpus* and then deal with the more important question which arises in connection with the other clauses. Now, with regard to the clause relating to the *habeas corpus*, the Government is speaking with two voices, because in the other place the Honourable the Home Member said that he did not propose to take up that question and deal with it at all. His point was that it was so disconnected with the rest of the Bill that it ought not to find a place in the Bill at all, and therefore he said he would not deal with it. His words are:

"My reason in not dealing with it is firstly that I have already detained the House for a somewhat longer period, and I do not wish to detain it unduly; and secondly, that this question of *habeas corpus* is so lacking in anything that is connected with the other matter contained in the Bill that it is impossible for us now to debate it effectively. It is a separate issue altogether, and therefore I do not propose to enter upon it".

That was the basis on which he dealt with the question in the other House.

There was no justification on the merits and he left it at that. I should have thought that that is rather unfair towards this Council, because if that power is to be vested in anybody at all, it must be in you only and not in any Member of the Council. Here an attempt has been made to justify the provision by saying that the Government cannot choose to subject themselves to the jurisdiction of the High Court and their decision under any one of these Regulations

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must be final. I shall have to speak more in detail when I deal with the other question about the advisability of taking the opinion of the High Courts on these larger questions, but at present I will only say this that wherever a local court has no jurisdiction to issue a writ of *habeas corpus*, the High Court of England has, and if any one of the persons against whom an order is passed under any one of these Regulations has money enough or influence enough to go to the King's Bench Division of England and ask the High Court Judge there to issue a writ of *habeas corpus*, it would be no answer to that demand that the man is detained under anyone of these Regulations. The High Court is entitled to call for the papers to see whether the man was justifiably detained, because it is the inherent right of every man to resort to that court and you cannot take away the jurisdiction of that court. If a local court has jurisdiction to issue a writ of *habeas corpus*, then the High Court of England will not issue one. But where the local court has no jurisdiction to issue a writ of *habeas corpus*, then the High Court of England would issue it. It is only those people who have enough money that can go to the High Court, those who have no money could not go to the High Court. Is it not, then, fair on the part of the Government not to compel them to undergo this heavy expenditure, but give them all the facilities here which they would otherwise have had if they went to England ?

Now, I come to the other question. I do not know whether it was omission or forgetfulness on the part of the Honourable Member who spoke on behalf of the Government, or whether it was my own carelessness but, I did not hear a word on the question as to the right of appeal from orders which may be passed by Government. So far as I am concerned, the whole thing hinges upon this.

THE HONOURABLE MR. H. G. HAIG : I do not think, Sir, that arises in this Bill.

THE HONOURABLE SIR SANKARAN NAIR : To me the whole thing depends on that. The Honourable Member says it does not arise. I shall show him how it arises. Government have got the power under the existing law to declare any association illegal if the association is of a certain character. We seek for the abolition of this power. The main reason for the abolition of that power is, in my opinion, that it is a power vested in the executive not subject to the control of civil courts. It must be open to the party to go to the High Court in order to impeach the order passed by the Local Government or the Executive Government declaring an association illegal. Speaking for myself, I would not mind leaving that power in the hands of the Government in that case. The Government may have that power.

THE HONOURABLE MR. H. G. HAIG : The Bill takes away that power from the Government.

THE HONOURABLE SIR SANKARAN NAIR : It takes away the unrestricted power to issue orders not subject to the jurisdiction of the High Court. I will explain it further. The Honourable Member says : " We must have the power." Very well. I say, you may have the power ; but if you pass an order under the section declaring or notifying that a certain association is unlawful, then give the right of appeal to the High Court where the party or the associa-

tion aggrieved can show that the association is not unlawful. I will exemplify it. There are many people in this country and there are some Members in this House who are willing to trust the Government to any extent and say that they would leave the power entirely in the hands of Government to do anything they like in this respect, that is to say, the Government might declare any Association illegal and they are willing to believe that the Government's orders are absolutely justifiable in the circumstances of the case. To them I have nothing to say. But I take it that the Government are satisfied that the majority of the people of this country do not accept the bare opinion of the executive Government as sufficient to deprive a person of his liberty. From one end of the country to the other you will find that intelligent men are not willing to accept this view of the Government that interferes with the liberty of the subject on their sole opinion. There is also another class of people who think that every thing that the Government does is absolutely unjustifiable even though the civil courts may declare such action of the Government to be lawful and justifiable in law. But at present they do not form a considerable section. Speaking generally, the great majority of people in the country would be satisfied if an executive order of the Government is upheld by a civil court. In that case they would accept the order as one which might or ought to have been passed.

Let me now refer to the examples given by the Honourable Members here and in the other place too. In the other place it was stated that in the United Provinces, there was a declaration under this Act that certain Congress Associations were illegal and we all know that many people were sentenced to months of imprisonment. Associations were declared illegal, but what was the result of that ? It increased the bitterness in the country, it widened the gulf between the people and the Government. Some of the most eminent men, who are held in the highest esteem and who now lead the most powerful party in another place, were punished under this Act. Their associations were declared illegal, with the consequences disastrous and injurious to the good government of the country in the sense that it made them hostile to Government in every respect. What was its effect elsewhere in India. Everybody felt that men of character and men of standing in the country should not be sent to jail by Government on mere one-sided representations, because after all the information that Government gets is one-sided only.

Now, take the other aspect of the case. Supposing they had an opportunity to go before the High Court and say : " We have been declared to belong to an association, that is the non-co-operation movement, which is declared illegal. Now we want the High Court to say whether that association is legal or illegal ". We know as a matter of fact that during the Punjab trials the Government came forward with the plea that the non-co-operation movement was an illegal one. But on account of an unfortunate word used by Mr. Montagu in Parliament the plea was dropped and that part of the case was not gone into and there was no decision by the Courts in the Punjab whether the non-co-operation movement was a legal or illegal one.

But supposing the High Court in the United Provinces had gone into the question and come to the conclusion that the non-co-operation movement was an illegal one which led to disorders in Malabar and when the Prince landed in Bombay, and in Chauri Chaura—supposing, I say, the High Court held that the non-co-operation movement was an illegal one,

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what would have been the result throughout the country? Peaceful men who were inclined to follow the law laid down by the ordinary courts —and they form the majority—would have said "The High Courts have declared this movement an illegal one; I shall not be a party to it; I will not join it". But what has been the actual result. When they heard that the non-co-operation movement, at the head of which were men like those men whom we know,—when they saw that the Government were acting against them and not venturing to go into a court of law, they were very much dissatisfied. There were men who had the interests of the country at heart who said "Well, we will join the movement". Repression in such instances always strengthens a movement. I say therefore it is in the interests of the Government that in all these cases there should be a decision by a court of law whose opinion will be respected. The recent decision of the Allahabad High Court, the judgment of the Chief Justice, has done far more to rally the ordinary people than any executive orders that might have been issued by the Government. His decision, or rather the decision of the High Court, that there was a widespread conspiracy commended itself to lots of people who said "If the Sessions Judge after such a careful enquiry has come to that conclusion and that conclusion is confirmed by the High Court, we have to believe it. At any rate, we cannot blame the Government for acting upon it." I say that is the case throughout. Therefore it is in the interests of Government themselves that they should allow a man who is so inclined to challenge the order of the Executive Government in a court of law; otherwise they would say "We shall not allow this autocratic Government to have its way with us, and therefore any attempt at repression must be met by resistance".

Then again are these questions to be decided by the Executive Government as to whether the non-co-operation campaign, the associations that carry on non-co-operation, are illegal or legal. Is that a thing to be settled by executive order? No, take another instance that has been referred to by the Honourable Member, that is, the association which was formed at Delhi, which started as a social service association, which developed into an association which it is said interfered with the duties of the police and were picketing. Are these questions to be settled by the Executive Council? I know of cases of picketing where villagers formed associations to prohibit drink in their village. The Government grant licenses to certain individuals who go there and open liquor shops; the villagers gather round the toddy shop and say to anyone who is going there "Don't go there!". That was regarded by the executive authorities as picketing though there was no threat or intimidation. That is one instance of picketing that has come to my knowledge. There are many instances in English courts which range from merely mild persuasion on the one side to threats on the other side. It is, then, as I say, one of the most difficult questions to decide and I say it is not a question to be decided solely and finally by the Executive Government. It is a question which should finally be submitted to the civil courts. Take again the other case—interference with the police. Well, the Honourable Member himself read one of those passages. Men have been hauled up because associations had been formed both in the Madras Presidency and the Bombay Presidency to assist helpless passengers at temple festivals, etc. The policemen at some places did not like it; they prevented the men from

doing that sort of thing and they said it was an interference with the duties of the police. If the Government want to carry the people with them in the administration of all these repressive measures, the only way to do it is to tell them "Here we want this power; we have exercised this power, and if you think that is wrong, go to the High Court". Do not give the power to the local courts, if you do not like it but to the High Court. It is said the witnesses will be terrified. Well, it is not only the Crown witnesses who are terrified, but also the witnesses of the accused. The one is quite as real as the other. I say therefore and I maintain it that if you want this co-operation between the Government and the people you must give the power of appeal; otherwise there should be no power to declare an association as illegal. I submit, therefore, that it is perfectly right to omit section 16. And after all I submit to the Council that section 2A which the Honourable Member declared as a useless section will meet all the purposes which the Government wants. That section says:

"Unlawful association means an association which is entered into by persons to commit acts of violence or intimidation".

The Honourable Member said you cannot give evidence of intended violence but all these acts in Malabar, Bombay, Chauri Chaura show that you could have proved it. How can it be said then that it is a useless section? I submit that that section meets all those cases where any violence is to be expected. It is only the other cases, where no violence is to be expected, that are dealt with in the other section which is to be repealed. I do not wish to trouble the Council on this matter any further.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: (East Bengal: Non-Muhammadan): I rise to support the Bill now before the House. The Criminal Law Amendment Act was passed in the year 1908 to repress the so-called Anushilan Samitis which were started through almost every district of Bengal. They were perfectly honest Associations organised for the purpose of self-defence and safeguarding the civil rights of the Hindus against the Muhammadans after the breaking out of the Jamalpur riots. When the boycott movement was adopted for the reversal of the partition of Bengal, these associations openly and peacefully picketed the markets of Bengal; this roused the ire of the Government against them. The Honourable the Home Secretary has himself quoted the other acts they were doing; they were travelling without tickets and doing such other things. Were these acts so very serious as could not be handled under the ordinary law of the country?

Yet this law was enacted to suppress them in spite of the earnest protest of the public from every quarter. The result was that this open movement was driven underground and brought in the anarchical movement in its train. This law then failed to suppress the movement and other methods had to be adopted for the suppression of anarchy in the country. This law remained a dead letter for a long time. Then came the non-co-operation movement. It was under the leadership of Mahatma Gandhi, a perfectly non-violent movement; but unfortunately for the people and I should venture to submit also, for the Government, this unhappy measure was again resorted to to suppress the movement. The result has again, as before, been to drive

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underground what had been an open and perfectly non-violent movement and to transform it into a violent one of anarchical crimes. During the non-co-operation movement this law was so much abused that thousands and thousands of men were put into jail under this Act till the jails of Bengal could hold them no more. Men like Mr. C. R. Das and Pandit Moti Lal Nehru were arrested. Even respectable ladies were not spared. Mr. C. R. Das's sister and wife and another lady also were arrested under this Act. Under section 15 (*2*) (*a*) only those associations whose object is to excite men to commit violence or intimidation or who habitually commit these acts are to be deemed unlawful. Applying the principle of *ejusdem generis*, the Government can declare only such associations to be unlawful under clause (*b*). Was the object of the non-co-operation movement led by Mahatma Gandhi a violent one? The Honourable Sir Maneckji Dadabhoy has referred to the time being not normal. May I ask him what is the meaning of the word? Is it not something that is the usual order of the day? If such a state of things as at present prevails continues as it has continued for about the last 15 or 16 years, I should submit that it is the normal state of things. This state of things, which has almost become normal with us has been brought about by the Government by the persistent operation of statutes like these and until they are repealed, no better conditions can be expected. Moreover what is there that is very abnormal in the country? During the 8 last years I think there have occurred only 11 cases of anarchical crimes in the country and compared to the vastness of the country and the number of cases of ordinary violence in this and other countries can we lay our hands on our hearts and say that the situation in this country is so very bad so far as anarchical crimes are concerned? Reference has been made by the Honourable Mr. Haig to the Bolshevik menace. May I ask him how many cases of Bolshevik conspiracy have cropped up in this country and on how many occasions has this law been resorted to in such cases?

THE HONOURABLE MR. H. G. HAIG: I did not mention it, Sir, in connection with this law. I referred to the Bolshevik menace in connection with clause 4.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Previous speakers have already dealt with the absolute negation of all principles of jurisprudence involved in this Act and I do not propose to deal with it any more.

THE HONOURABLE RAI BAHADUR NALININATH SETT (West Bengal: Non-Muhammadan): Sir, I support this Bill to repeal and to amend the criminal laws. It is a very very modest attempt on the part of Sir Hari Singh Gour to introduce a healthy atmosphere in the relationship of the governors and the governed. In spite of the passages extensively quoted by the Honourable Mr. Crerar from the Report of the Repressive Laws Committee in the Assembly debates, I am of opinion that the Government ought to have come forward some years ago with a proposal to repeal the Criminal Law Amendment Act of 1908. The recent ruling of the Calcutta High Court with regard to *habeas corpus* makes it imperative on all public men of India to support the measure of Sir Hari Singh Gour. These are

the only bed rocks upon which any liberty of the subjects can be built, and it needs no discussion to convince any one that they are so. The opposition to obvious propositions of political rights proceeds from two sorts of mentality, one from cupidity of the powers that be in enjoyment of irresponsible discretion, and the other, from the incapacity to stand by the fundamentals of social life wherein reciprocal duties are recognised in every-day affairs of life.

In the Assembly the Honourable Mr. Crerar raised three points against Sir Hari Singh Gour's Bill. First, he threw out a challenge to the supporters to quote any instance of abuse of the powers conferred by the Amending Act. of 1908. Disbanding of associations is itself an abuse of power, and if an association as an association is acting illegally in the prosecution of their objects, there is ample provision of the law in the Statute-book to deal with those acts and the men in particular who engage themselves in such acts. The Honourable Mr. Crerar and his supporters forgot that the associations which were or have been disbanded under the Act of 1908 were dealt with on the opinion of the executive authorities and that this opinion was formed on some secret reports. This is the history of the administration of this law and if instances of its abuse have to be proved to the satisfaction of reasonable men, it will require an organised activity like that of the State itself to hunt up the circumstances which produced the perverse mentality leading to the declaration of the unlawful character of the associations concerned. If the Government lays on the table all the papers in connection with the declarations made hitherto, then and then only they can ask us to point out the instances of abuse, otherwise not. Secondly, in the Assembly debate the Honourable the Home Member quoted some instances where the Act of 1908 proved effective. He admitted it to be "a recital of a gloomy tale". I appeal to this House to pause for a few seconds and answer to themselves the few questions I put to them. If only a quarter of a century ago the whole of the British Empire rang with the echo of the outburst of loyal grief over the passing away of that beloved Queen Victoria the Good, who had and have had since then the monopoly of powers for evil and good in the body politic of India? Who had and have disregarded the sound advice of loyal co-operation like the late Mr. Gokhale and the late Sir Rashbehary Ghose who cried themselves hoarse to point out which way lay peace and law and order? Whose jail doors had to be opened to let in persons by tens, by hundreds, and by thousands as years rolled on and on, till the room within could not accommodate all those who were not chargeable with any of the definable offences of the Penal Code, but who had ideas of liberty other than those that were permissible in the opinion of the executive authorities? Is it not a travesty of pleading to say that Chauri Chaura was the culmination that could be traceable to the enrolment of 110,000 volunteers in the United Provinces in 1922? And is it not perversity itself backed up by inefficiency of a funky short-sighted policy to plead for the permanent retention of the Act of 1908 in the Statute-book after this "recital of a gloomy tale"? I know irresponsible power and the straightforwardness to confess a failure are an incompatibility in human nature. Thirdly, it has been pointed out that the provision relating to *habeas corpus* has been unhappily tacked on to the measure repealing the law as to unlawful associations. I deem it

[Mr. Nalininath Sethi.]

to be my duty to emphasise the common issue underlying the two principles. The one is the power of the executive to illegalise the liberty of human combination, and the other is the power of the executive to illegalise the liberty of individuals. In both the cases the proposed Bill wants to take away the power to illegalise what is, otherwise legal and legitimate. It does not in any way propose to take away any of the powers of a normal Government nor does it put any fetter in enforcing the responsibilities of that Government. If the exercise of the powers to illegalise the normal activities of the governed either in associations or as individuals simply on the opinion of the executive which cannot bear scrutiny if they are brought out in the light of the day, is a matter of "strong probability in the future," "the solicitude for the liberty of the subject" in the Legislative Hall, sounds as mockery.

Sir, I take this piece of legislation as a return movement to normal conditions. Enough of suspicion and distrust and the gloomy tale of their consistent aftermath! I appeal to this House and the Government to stand erect in the sunny rays of trust and goodwill without which society cannot move an inch. I fervently remind this House that we have already proved ourselves to be sufficiently lagging behind the spirit of the times. To allow men to associate in political activities irrespective of frown and favour of the opinions of the ruling powers respecting the criminal laws of the land and to surcharge the atmosphere with the security and conviction of individual innocence in the light of one's own conscience, is the primary duty of a legislature, and if we fail therein, we fail as a legislative chamber.

This House should remember that the free thinkers of the world are trying to stand up and oppose the invading barbarity of what is known in another country as "Fascism". In this connection let me read to you extracts from a recent appeal by one Mr. Henry Barbusse who is now trying to organise the free thinkers of the world—

"We see everywhere crushed or threatened all the conquest of freedom that had been achieved by centuries of sacrifices and strenuous efforts. Freedom of association, freedom of press, freedom of opinion, and even conscience itself all are persecuted. We can no longer remain silent in the presence of this bankruptcy of progress, * * *

In every country under more or less open forms but more and more audaciously and criminally, everywhere in forms more and more organized every day, a white terror is let loose on the populations and the most sacred principles of individual and collective freedom."

In support of this appeal our poet Rabindranath has written to Mr. Barbusse:

"It is natural to expect in primitive peoples their faith in ceremonies of power-worship dripping with human blood; their awe-struck veneration for the relentless physical force that at first coerces and then fascinates its victims into the abject obedience of slavery. Such a mental attitude only indicates an immaturity of moral consciousness which like the thoughtless cruelty of adolescence can claim a future of growth for its rectification.

But when a similar phenomenon makes its appearance among cultured peoples it proves the second infancy of senility that has lost its control over animal passions. Its greed is not of impulsive youth but of a hardened old age efficiently unscrupulous. Its infection is noxious because while it exhales from its core an unwholesome odour of decay and death its outer skin swells and glows with an exultant flush of rottenness."

With these words, Sir, I support the motion.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN (North-West Frontier Province : Nominated Non-Official). Sir, I am not a lawyer, and I do not know the subtleties and technicalities of law, but I will express my opinion as a layman about this Habeas Corpus Act. I regret I cannot take the view that has been taken by the Honourable Mover of this Bill. England is a country inhabited by one race, professing one religion whereas in India we have so many races and so many different creeds and religions. India is inhabited by different classes and races of people with different modes of living and different modes of thought. Every section of the people in this country is at variance with the other in the matter of religion and living. The differentiation of castes, creeds and religion is the greatest misfortune of the Indians. This differentiation has given rise to dissensions and bloodshed among different communities at different times, and the entire history of India has got ample evidence of this. This differentiation is responsible for all the dissensions and mischief in the country. All these things mean that the people of India are not yet fully prepared to receive this boon because they cannot live peacefully among themselves yet. Therefore, Sir, I do not think we are yet fit to enjoy this privilege. Instances are not wanting to show that the people of India have sometimes become uncontrollable and since they are unable to control themselves, Government ought to possess the power so as to enable it to bring the people under control when the authorities find it necessary; otherwise there will be feuds and troubles almost every day. I do not think, Sir, that the majority of the inhabitants of this country are in a position to fully appreciate the value of the Habeas Corpus Act, and unless they are able to fully appreciate its value, it would not be wise to grant them this privilege just yet. It would be premature to repeal this section. To my mind, Sir, it would be certainly wise to postpone consideration of the repeal of this Act until the country is a little more peaceful again, because the repeal of the Act will then be better appreciated by all communities than at present. Sir, I oppose this motion in view of the present communal tension.

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir, when I left this House on Monday evening, my inclination was to tackle this morning fully, adequately and satisfactorily my Honourable friend Sir Maneckji Dadabhoy. But, Sir, since I went home and reflected more seriously, I thought it would be a fruitless task. I find from the references that he gave to his former speech that he has made considerable progress in the direction of reactionarism since 1925.....

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official) : I never made any personal references to my former speech.

THE HONOURABLE MR. V. RAMADAS PANTULU : Yesterday he told me that it might have been much better to ask for the repeal of the entire second part of the Criminal Law Amendment Act instead of seeking to mutilate it in this way....

THE HONOURABLE SIR MANECKJI DADABHOY : No.

THE HONOURABLE MR. V. RAMADAS PANTULU : You said so.

THE HONOURABLE SIR MANECKJI DADABHOY: I said quite a different thing.

THE HONOURABLE MR. V. RAMADAS PANTULU: Then, Sir, I find in February 1925 when a motion for the repeal of the second part of the Criminal Law Amendment Act, was before this House, he said it was better to ask for the repeal of all repressive laws, and when that motion was before this House in September 1925, he voted against it and said that nothing should be repealed.

Therefore, it is merely a question of appealing from Philip the sober to Philip the drunk. I do not think it is any use to argue with my Honourable friend Sir Maneckji Dadabhoy or about him. So I leave him at that.

1 P.M.

With regard to my Honourable friend Mr. Haig, I expected him to deal with two aspects of this question. I may assure him that we on this side of the House are as anxious for the maintenance of peace and order in this country and we also know that the Government is asking for these extraordinary powers ostensibly to protect the life and property of the people of the country. Any power that they want, any measure that they want on the Statute-book vesting them with extraordinary powers is only asked for in the name of the safety of the people of the country. Therefore, when we on this side ask for the repeal of this particular piece of legislation, we do it with a full sense of our responsibility having regard to our own safety and the safety of our own country: Therefore I expected to hear from my Honourable friend Mr. Haig any reason for not repealing this Act, any reason to convince us of the untenability of our position. I wanted him to demonstrate to the House that since 1908, between 1908 and 1927, opportunities have not occurred in this country for the repeal of this legislation, in accordance with the promise held out both by the Repressive Laws Committee and by the Government, and, secondly, that the ordinary laws of the country have not been enough to deal with the situations which the second part of the Criminal Law Amendment Act intended to deal with. These are matters on which I expected my Honourable friend Mr. Haig to convince me. If I were convinced, I would freely admit that the Government was trying to have the powers merely to administer them for the safety of the country? But I am obliged to say that he has not convinced me on any one of those two points. Since 1908, after the original Act was passed many things have happened in this country and many situations have arisen which made it possible for this Act to have been repealed. On the 11th December 1908 this Bill was passed and it received the assent of the Governor General. On the 17th December 1908, the papers relating to the Minto-Morley Reforms were placed before Parliament and a great deal was made about those reforms both in England and India. They said that the reforms brought peace and order into the country. In the year 1911-12 when Their Majesties the King and Queen visited this country, it was openly given out by the Government that peace and order reigned in this country. The Government said there was peace, contentment and happiness in India. Between 1912 and 1914 nothing serious happened so far as I can see from the facts. In fact in 1913 the Government added some sections to the Indian Penal Code to deal with seditious conspiracies, such other things with which the second part of the Criminal Law Amendment Act was intended to deal, with a view, I take

it, ultimately to repeal that Act. And from 1914 to 1918 the Great War was on and India at that time showed its loyalty because India believed that England's difficulty was India's opportunity to show her good-will to Britain and obtain freedom from her British masters. Nothing was done between 1908 and 1918, though peace and order reigned and though Their Majesties the King and Queen visited India and were welcomed wholeheartedly and loyally by all sections of the population in this country. A decade has passed between 1908 and 1918, not a little finger of the Government was moved to repeal the second part of the Criminal Law Amendment Act. Therefore it is somewhat difficult to believe when my Honourable friend Mr. Haig stated that opportunities had not presented themselves to the Government to repeal this Act and that a suitable atmosphere was not prevalent in the country to repeal the Act, and so on. We all know what happened since 1919 and onwards. My Honourable friend Mr. Natesan referred to the non-co-operation movement and he paid a doubtful compliment to his own section of the province by praising the Andhra country as the most forward and advanced during the days of non-co-operation. I am not ashamed of the part played by my part of the country. Still, I do not think that is a justification for the Government not to repeal this part of the Criminal Law Amendment Act. Then, with regard to the sufficiency of the ordinary law, my submission is that it is quite enough to deal with situations which are contemplated to be dealt with by the Criminal Law Amendment Act. We are not yet told why it is necessary to declare by executive order associations unlawful and to make a declaration conclusive even without recourse to the judiciary by way of appeal. Not a single argument was addressed to this House to convince us that the ordinary provisions of law are not enough. My Honourable friend over and over again challenged us to show instances in which this Act was misused. My Honourable friend Sir Arthur Froom also said that. I have already said it is very difficult to demonstrate that a particular Act was abused when the opportunity to test the action of the Government in law courts is denied by the Act itself. Therefore, such proof as we can give must be based upon public opinion. I have given some instances where public opinion has expressed itself on the misuse of the Act, in the imprisonment of people like Pandit Moti Lal Nehru, Lala Lajpat Rai, Mr. Das and others. I might have mentioned one more instance the other day showing how this Act was misused. I will do so now. I refer to the way in which the Shiromani Gurdwara Parbandhak Committee in the Punjab was declared unlawful under this Act. It was a Committee intended merely for the internal reform of the Sikh shrines, and the religious institutions of the Sikhs. This Act was misused so far as its application to that Committee was concerned. For a long time the monies sent to this Committee were held up by the postal authorities and at the same time we know from the Press that the Government were carrying on negotiations with eminent and respectable members of that body who were either in jail or in dread of jail in the Punjab. My Honourable friend wants instances of the misuse of the Act. I cannot understand what more grave and gross misuses of the Act there can be than the ones I cited before. Therefore it is no use saying that there was no misuse of the Act. There is also no use of my Honourable friend merely saying that the ordinary law of the land was not enough, and secondly that opportunities have not presented themselves for the Government to repeal this obnoxious measure.

[Mr. V. Ramadas Pantulu.]

One word more and I have done. With regard to the *habeas corpus*, it is true as Mr. Haig stated that the extension of the writ of *habeas corpus* to persons detained under Repressive Regulations will to a great extent nullify the operations of those Regulations. My Honourable friend Sir Sankaran Nair, with his profound legal knowledge, dealt with the question very fully. I will only cite here one passage from Morley's Recollections in which he effectively answers the Government of India's argument when they pressed for the retention of this power under the Regulations and objected to the writ of *habeas corpus* or doing anything which would bring those persons under the ordinary process of the law. Lord Morley in his Recollections addressing the Viceroy said :—

"You state your case with remarkable force, I admit. But then I comfort myself in my disquiet at differing from you, by the reflection that perhaps the Spanish Viceroys in the Netherlands, the Austrian Viceroy in Venice, the Bourbon in the two Sicilies, and a Governor or two in the old American colonies, used reasoning not wholly dissimilar and not much less forcible".

Speaking of the Regulations, this is what Lord Morley wrote :

"The question between us two upon this matter may, if we don't take care, be what the Americans would call ugly. I won't repeat the general arguments about deportation. I have fought against those here who regarded such a resort to the Regulation of 1818 as indefensible. So *per contra*, I am ready just as stoutly to fight those who wish to make this arbitrary detention for indefinite periods a regular weapon of Government. Now your present position is beginning to approach this. * * * * *

"You say, 'We admit that being locked up they can have had no share in these new abominations ; but their continued detention will frighten evil doers generally.' That is the Russian argument ; by packing off train loads of suspects to Siberia we will terrify the anarchists out of their wits, and all will come out right. The policy did not work brilliantly in Russia, and did not save the lives of the Trepoffs, nor did it save Russia from a Duma, the very thing that the Trepoffs and the rest of the 'offs' deprecated and detested".

I say this is not going to save the British Government in India either.

THE HONOURABLE SIR DINSHAW WACHA : Lord Morley would have modified his opinion now, under present altered conditions.

THE HONOURABLE MR. V. RAMADAS PANTULU : I wish he lived to hear my Honourable friend Sir Dinshaw Wacha on that point. Perhaps he would then have benefited by Sir Dinshaw Wacha's advice. The Honourable Mr. Haig took objection to my saying that this piece of legislation was an uncivilised one and that it ought not to be on the Statute-book. He consoled himself with the thought that few people in this country were literate and would hardly know what was on the Statute-book. Therefore that was not a consideration which need weigh with the House. But may I say, Sir, speaking from the point of view of civilisation, the civilisation of a country is judged by its laws. There are other civilised nations in the world who will judge the British Government in this country by the laws it enacts and enforces. Therefore, Sir, you will be judged by your peers among other nations. Therefore, let not the Government console themselves with the thought that the people of India are too ignorant and illiterate to know the laws of the country and that they only know how to suffer the punishments inflicted under those laws.

I would once more respectfully urge the Government to take a broad view of this question. If good-will is to prevail in this country, these repressive laws, which are a Damocles' sword hanging over our heads, must go. So long as that is not done, no progress is possible. If the Government is sincere in its professions that it wants to guide the people of this country along the path of progress and self-government, the best way is to give freedom. The difficulty is that the Government is not responsible to the people. My Honourable friend over there used more than once in his reply the word "responsibility." May I know to whom he is responsible? Even under the Government of India Act it is claimed that the Government is not responsible to the legislature. It is both irresponsible and irresponsive. Therefore, it does not lie in his mouth to say that the Government is responsible. It is not even responsive. That is why we have a certain amount of suspicion against the Government and the best way of removing that suspicion is not to dangle these repressive laws over us but to take a broad and statesmanlike view of the matter and to vouchsafe freedom and liberty of the citizen to the people of this country.

THE HONOURABLE MR. H. G. HAIG: Sir, I do not wish to detain the House long at this hour. My Honourable friend the Mover has put his case, I quite admit, in a temperate way and thereby I think he has undoubtedly strengthened it. But I do not think he has really traversed substantially the main points which I made in my speech, and which I do not propose now to repeat to the House. He said that there were ample opportunities to repeal this Act earlier and that the Government would have been wise to have taken those opportunities. But, Sir, one of the main points I wish to make is that from time to time, unfortunately in this country, and at times which cannot be foreseen or predicted, occasions arise when it is necessary to act, and when, if my Honourable friend's recommendation had been accepted and the Act had been repealed before 1919, the country might have been placed in a very difficult position. Only in the last few years, as my Honourable friend is aware, this Act has had to be applied both in the Punjab and in Burma, and I wish to say quite definitely that in my opinion the application of this Act in the Punjab in that exceedingly dangerous conspiracy, the Babbar Akali, was one which was fully justified in the interests of the security of the whole country. I do not deny that a serious responsibility rests on the Executive Government in declaring an association to be unlawful, but what I do claim is that those powers have always been exercised with a due sense of responsibility.

THE Honourable Mr. Khaparde, I think, asked why it was not possible to put the Government case before the courts, and the same point has been made by several speakers. Well, Sir, the main thing is that this Act is employed only when there are conditions of serious and widespread disorder in the country; and at a time like that is it possible to go through the lengthy legal processes, to have a trial first of all in the Magistrate's court and then by slow gradations up to the High Court where there will no doubt be long and very learned arguments and in the meantime perhaps six months will have gone by and what is the state of the country? When disorder has once got a start it cannot be overtaken, and that is why when these circumstances unfortunately arise it is necessary to act at once.

Then, Sir, I think, a certain amount of prejudice has perhaps been raised against Government in connection with the conviction of certain particular

[Mr. H. G. Haig.]

individuals under Part II of this Criminal Law Amendment Act. About that I only want to say this much, that the fact that particular individuals have been convicted under the Act does not show that the circumstances prevailing in the country did not justify the application of that Act. The situation, as I see it, Sir, was this that certain respected persons did think it their duty, as I mentioned the other day, as a political protest to defy the laws of the country, and at the moment the easiest way to defy those laws was to break this particular provision, which carried with it no moral obliquity. That is no reason for holding that these particular organisations should not have been proclaimed as unlawful.

Then, Sir, my Honourable friend Sir Sankaran Nair, developed a learned argument in favour of an appeal to the High Court. Well, Sir, I have dealt with the main point, I think, when I explained how it would not really meet the situation if we have a long process of legal trials ending in the High Court; but apart from that the Bill, as it stands, takes away from the Local Government altogether the power of declaring an association to be an unlawful association, and the situation is not that which my Honourable friend's argument, I understand, really contemplated—that is to say, a Local Government declaring an association to be unlawful and then an appeal to the High Court; that is not the situation as it arises under this Bill.

Then, Sir, one final word in connection with a remark which the Honourable Sir Sankaran Nair made. He spoke of the non-co-operation days in the United Provinces where this Act was used, and he said that the use of this Act increased the gulf between the Government and the people in the United Provinces and I understand caused great resentment and hostility. Well, Sir, I consulted my own experience, and I confess I was surprised at what the Honourable member said. I belong myself to the United Provinces. It so happened that during the days of the non-co-operation movement when it was at its height I was away from the Province, but I returned to the Province to the district of Agra in September 1922, I suppose about six months after this action had been taken, and having read a great deal about the unrest in the United Provinces, the ill-feeling and the terrible tragedies of which I had heard, I was astonished when I returned to the Agra district—a district which in my earlier service I had known very well—to find how unchanged the attitude of the people was, how entirely friendly, and what excellent relations there were between the people and the Government officers.

I inquired about conditions there some six or eight months previously and I found that during the previous cold weather Government officials could hardly camp in that district without being insulted. I went all round the district in the cold weather of 1922-23 and met everywhere with manifestations of the greatest friendliness. Well, Sir, there, it seems to me, is the real result of the application of those measures.

In conclusion I would merely emphasise once more the serious responsibility that rests on this Council in the vote that they are about to give and I hope that their votes will be given with a due sense of that responsibility.

THE HONOURABLE THE PRESIDENT: The question is: That the Bill to repeal and amend certain provisions of the Indian Criminal Law Amendment

Act, 1908, and the Code of Criminal procedure, 1898, as passed by the Legislative Assembly, be taken into consideration.

The Council divided :

AYES—17.

Desika Chari, The Honourable Mr. P. C.
Govind Das, The Honourable Seth.
Khaparde, The Honourable Mr. G. S.
Mahendra Prasad, The Honourable Mr.
Manmohandas Ramji, The Honourable Sir.
Mukherjee, The Honourable Srijut Loke-nath.
Natesan, The Honourable Mr. G. A.
Oberoi, The Honourable Sardar Shivdev Singh.
Ram Saran Das, The Honourable Rai Bahadur Lala.
Ramadas Pantulu, The Honourable Mr. V.
Rama Rau, The Honourable Rao Sahib Dr. U.
Rampal Singh, The Honourable Raja Sir.
Ray Chaudhury, The Honourable Mr. Kumar Sankar.
Sankaran Nair, The Honourable Sir.
Sethna, The Honourable Sir Phiroze.
Sett, The Honourable Rai Bahadur Nali-ninath.
Sinha, The Honourable Mr. Anugraha Narayan.

NOES—25.

Akbar Khan, The Honourable Major Nawab Mahomed.
Alay Nabi, The Honourable Saiyid.
Bell, The Honourable Sir John.
Berthoud, The Honourable Mr. E. H.
Bray, the Honourable Sir Denys.
Brayne, The Honourable Mr. A. F. L.
Charanjit Singh, The Honourable Sardar.
Commander-in-Chief, His Excellency the.
Corbett, The Honourable Sir Geoffrey Latham.
Dabadhoy, The Honourable Sir Maneckji.
Das, The Honourable Mr. S. R.
Froom. The Honourable Sir Arthur.
Habibullah, The Honourable Khan Baha-dur Sir Muhammad, Sahib Bahadur.
Haig, The Honourable Mr. H. G.
Hooton, The Honourable Major-General Alfred.
McWatters, The Honourable Mr. A. C.
Mehr Shah, The Honourable Nawab Sahibzada Saiyid Mohamad.
Misra, The Honourable Pandit Shyam Bihari.
Muhammad Buzlullah, The Honourable Khan Bahadur.
Stow, The Honourable Mr. A. M.
Swan, The Honourable Mr. J. A. L.
Tek Chand, The Honourable Diwan.
Tudor-Owen, The Honourable Mr. W. C.
Umar Hayat Khan, The Honourable Colonel Nawab Sir.
Wacha, The Honourable Sir Dinshaw.

The motion was negatived.

The Council then adjourned for Lunch till a Quarter to Three of the Clock.

The Council re-assembled after lunch at a Quarter to Three of the Clock, the Honourable the President in the Chair.

RESOLUTION *RE* CONSTITUTION AND POWERS OF THE COUNCIL OF STATE.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay : Non-Muhammadan) : Sir, with your permission I would request the House to allow me to alter

[Sir Phiroze Sethna.]

one word in the Resolution. I would like to alter the word "Indians" in the third line to the word "persons".

THE HONOURABLE THE PRESIDENT: Will the Honourable Member move it in the amended form.

THE HONOURABLE SIR PHIROZE SETHNA: Thank you, Sir.

I beg to move, Sir:

"That this Council recommends to the Governor General in Council the appointment of a Committee consisting partly of elected and partly of nominated non-official or official Members of both Houses of the Central Legislature with some persons, outside the Central Legislature who are known for their study and knowledge of constitutions to consider and report on—

(1) the constitution and powers of the Council of State;

(2) the qualifications of Members and voters thereof;

(3) the constitution of the constituencies entitled to elect Members to the Council of State; and on

(4) other incidental matters;

so as to make the Council of State a proper revising Chamber.

The Committee to report on or before 1st August 1928."

This Resolution raises the question of what should be the future constitution, powers, functions, etc., of this Council. Nearly seven years have elapsed since, under the reformed constitution of 1919, this Council came into existence and the Statutory Royal Commission will soon be appointed to inquire into the entire system of government introduced by the Government of India Act, 1919. There will soon be therefore a full consideration of the constitution that has brought us into existence.

The House is aware of the brief history of this Council. The original scheme for the constitution of the Council of State as proposed in the Joint Report on Reforms, was different from that which ultimately found embodiment in the Act. The authors of the Joint Report wished to make the Council of State a mere organ for carrying Government legislation in matters which the Executive deemed essential, they did not aim at setting up a complete bicameral system. They said:

"We do not propose to institute a complete bicameral system, but to create a second Chamber which shall take its part in ordinary legislative authority in matters which the Government regards as essential."

The Joint Parliamentary Committee brushed this original scheme aside and urged that the Council "should be reconstituted from the commencement as a true second Chamber." The Government of India Bill was accordingly amended and this Council was constituted on lines which are supposed to make it "a true second Chamber". The Indian Legislature was thus deliberately given a bicameral form, and the question which we have got to consider is, is it possible to improve the system so as to make the Council of State conform to sound conceptions of what a true second Chamber should be.

I do not think, we shall ever go back upon the system and prefer a single Chamber Legislature. The relative merits of the double Chamber system and the single Chamber system are still a matter of controversy. Within

recent years, two Eastern States, namely the Turkish Republic and the Far Eastern Republic of Siberia have adopted the single Chamber system. On the other hand, the Irish Free State has deliberately preferred the double Chamber system. Barring such exceptions, the general consensus and trend of opinion among political thinkers and politicians all over the world are in favour of the double Chamber system. Gambetta, the great French statesman who saved France from the debacle of the Franco-German War of 1870, expressed an opinion about the bicameral system which may yet be considered as truly representative of all enlightened and sane opinion on the subject. Gambetta at first did not approve of the bicameral system and was opposed to the institution of the Senate in the French constitution. Later on, however, he became its resolute and reasoned supporter. In 1882, he declared that the principle of two Chambers

"is the guiding principle of all parliamentary government and remains despite past errors the guiding principle of all democratic government"

I think, it is impossible to improve upon this estimate of the bicameral system, and we may assume with all justifiable confidence that this Council of State has come to stay, that its necessity and value as a true second Chamber are generally recognised.

Having made the ground clear, it is obvious our object must be to make this Council a true second Chamber. Now what is a true second Chamber? What are its functions? In England there has been for years past and there still is a good deal of discussion as regards the functions of the second Chamber. In 1917 the then Prime Minister of England set up a "Conference on the reform of the Second Chamber" consisting of 50 members drawn in equal numbers from both Houses of Parliament. The Chairman of the Conference was the late Viscount Bryce, the eminent author of those two great works "American Commonwealth" and "Modern Democracies". In the opinion of the Conference, the functions of the second Chamber are :—

(1) the examination and revision of Bills brought from the House of Commons,

(2) the initiation of Bills dealing with subjects of a practically non-controversial character, which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it,

(3) the interpretation of so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it, and

(4) full and free discussion of large and important questions.

The Conference of course considered the question with special reference to British conditions, but there can be no doubt these four functions may be taken as the proper functions of every true second Chamber. Of these four functions, I consider the first and the last as the most important. The popular Chamber is perhaps the arena where more important issues are fought out and its proceedings are therefore followed with keener interest and attention. But the belief is that it would be doing no injustice to the popular Chamber to say that its atmosphere is predominantly partisan, that it is more apt to be

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swayed by excessive enthusiasm, by emotion rather than by cold reason, by what is demanded in the interest of party, than by what is warranted by the interests of the nation. It is possible, therefore, that its legislation may at times be hasty, ill-judged, partial, indifferent too, if not positively disregardful of, the interests of minorities. It is in fact these characteristics of the popular Chamber that constitute the justification for the institution of the second Chamber. The second Chamber is a body of what are called " senatorial persons " that is, of persons who are so far advanced in age as to be free from the vehement impetuosity of youth, and yet not so far advanced as to have developed the intellectual sluggishness of senility....

THE HONOURABLE SIR DINSHAW WACHA (Bombay: Nominated Non-official): Including yourself.

THE HONOURABLE SIR PHIROZE C. SETHNA: Men who will approach every question, not from the narrow party point of view, but from the broad national point of view, who will bring to bear upon it, a rich, mature, calm and trained judgment illumined by enlightened reason, by actual practical experience of complicated human affairs, who will constantly endeavour to be just to all interests, to minorities no less than to majorities and who will seek to reconcile and verify all interests for the common good of the nation. This may seem an ideal difficult of attainment; it is, all the same, an ideal to which we must approximate as much as possible.

Now, let me turn to the constitution, powers, etc., of this House, so as to indicate some of the questions which the Committee which I am proposing will have to investigate.

The Council of State consists of sixty Members of whom thirty-three are elected. The first question that arises is if the number of elected members is an adequate one? The second Chamber, it is true, should not be a large unwieldy body. It should be a select, compact body, but without contravening this principle, may not the number of elected Members well be increased? Then again, is there any need even in the transition stages for official Members or at any rate for so many official Members in this House? Further, if the constitution of India is to be developed on federal lines, if India is ultimately to be a Federation, it is necessary to examine if the different provinces or States, as they may come to be called should have unequal representation as at present or should they elect the same number of members, irrespective of the size and population of each province as is done in federal countries like America, South Africa, and Australia? Federalism implies equality of constituent States in federal relations and this, obviously, means that no single state should have preponderant or excessive representation in the second Chamber which is regarded as the special custodian of federal interests and relations, which, broadly speaking, are the same in each case. Whilst there is equal representation in the Upper House, in the Lower House the number of representatives is dependent on the size and population of the State. The Senate in the United States is therefore the true Federal House and for various reasons actually wields greater power over public affairs. All these questions, therefore, namely, what should be the strength in numbers of elected Members of this Council, whether each province should have the same measure of representation

or whether it should vary with area and population, and whether the official element cannot wholly or partially be dispensed with or whether its continuance is still desirable, will require consideration.

Then, again, there are these questions, namely, what should be the qualifications of senators, that is, of Members of this Council, and who should have the right of electing them. With regard to this we find different provisions in different countries. Most constitutions require an age limit for a senator, some fix it at 30, some at 35 and others even at 40. In France, senators must be forty years old, and that is the only qualification required of them in that country. In our country there is no special age limit for Members of this Council, both the Members of the Legislative Assembly and of the Council of State must be at least twenty-five years of age. As the theory of the Second Chamber implies that it should crystalise the ripe wisdom and mature judgment of the nation, it seems desirable to lay down a higher age limit for Members of that Chamber than for those of the popular Chamber. Many constitutions insist on a property qualification, but it deserves to be noted that the Bryce Conference, to which I have already referred, has expressed the opinion that there should be no such qualification for elected members of the amended House of Lords as proposed by the Conference.

3 P.M.

This Council of State is elected on the principle of direct election, but the franchise is based mainly on a high property qualification. As regards direct election, the Bryce Conference rejected it on the ground that a directly elected Second Chamber would tend to become a rival of the House of Commons and be able logically to claim co-ordinate authority. In France, the Senate is elected by electoral colleges consisting of members of local authorities or bodies—a plan which too does not find favour with some people on the ground that local authorities are not elected with the idea of fulfilling such a purpose. In South Africa, the members of the Senate are elected for each province by a group of electors consisting firstly of the members of the provincial Council of the province and secondly of the members of the House of Assembly elected from the same province. If we are to follow that principle here it will mean this, that the Punjab would be represented in the Council of State by Members who would be elected by the Members of the Punjab Legislative Council *plus* Members who have been returned by the Punjab Province to the Legislative Assembly. In Norway, whose second Chamber is considered as one of the best in the world, the system is that after the "Starthing" has been elected, it elects from among its own members one-fourth the number to constitute the Second Chamber, the "Lagthing" and the remaining three-fourths constitute the first Chamber, the "Odelsthing".

If we classify all the various plans adopted for the constitution of the Second Chamber in different countries we shall find that they fall under each of these, apart, of course from the hereditary principle, namely,

(1) direct election by large constituencies,

(2) nomination for a small number of the Chamber in order to secure the presence of persons of eminence not actively engaged in party politics,

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(3) election by local bodies grouped together in geographical areas on some such place as obtains in France, and

(4) election by members of the provincial legislature and by local members of the First Chamber, or by members of the First Chamber themselves.

We shall have to consider whether the existing system is not the best for this country or whether it should be replaced by the system of election by local bodies as in France or by members of the provincial Councils along with local members of the Legislative Assembly as in South Africa.

Then, there are the most important questions of all, the question of powers and the question of settlement of disagreements between the two Chambers. The powers of the Council of State are almost co-equal with those of the Legislative Assembly. Money Bills are not excluded from its decision and vote, as in some countries, and the only power which it does not possess is that of voting on the Budget, which is exclusively vested in the Legislative Assembly. It is difficult to understand the logic of this arrangement. We have the right to vote on every Finance Bill; no difference is made between such a Bill and any other Bill. All are treated alike. A Finance Bill of course brings in revenue which forms part of the Budget, but yet we cannot vote as to how the revenue should be spent. Our vote is asked for when it is a question of revenue; we are asked to sanction Government proposals of taxation, but we are debarred from sanctioning expenditure. We are considered fit to control the raising of money; we are not considered fit to control the expenditure thereof. This is an item which would be taken in hand by the Committee. The Members of this Council, constituted as it is, represent a body of voters who pay the largest amounts of revenue to Government, either by way of land revenue or income-tax, and yet they have no right to tell the Government how the revenues ought to be spent. If the Second Chamber is to consist of men with riper judgment surely their decisions on matters of public expenditure cannot fail to be valuable to the Government. I therefore drop a suggestion which may well receive consideration namely, why should the Budget not be considered and voted on in a joint sitting of the Legislative Assembly and the Council of State? Such a system obtains in Norway, and it is certainly worth while considering whether it should not be adopted in this country.

As regards the settlement of differences between the two Chambers, the convening of a joint sitting depends upon the discretion of the Governor General who may or may not convene it. There is a limit of six months fixed before which a joint sitting can be called. Why should such a discretion be given to the Governor General, why should not a joint sitting be made obligatory in such cases and why should not the period of six months be removed? I should like the Committee to consider whether it should not be made obligatory under the Act for a joint sitting as soon as there is a difference of opinion between the two Houses. These are all points which deserve careful consideration by the Committee.

There are several other points in connection with this question of the second Chamber, such as its duration, whether for five years or longer or whether a certain proportion of its Members should go out of office after a certain number

of years and so forth. I must content myself with a bare reference to them. One other point for consideration would be why the Council should not elect its President as does the Assembly. I have said enough to show what ample scope there is for reconsideration and revision of the system of the second Chamber as it obtains in this country. The object is to secure the best possible system, having regard first to the various theoretical considerations and views bearing on the subject, secondly to the lessons that may be drawn from the systems of other countries and their actual working, thirdly, to the special conditions of this country and fourthly to the actual working of the existing system since its inception.

There are other features of the existing system to which reference must be made. Except in the Central Provinces, where there is only one general constituency, in all other provinces there are separate electorates for Hindus and Muhammadans.

THE HONOURABLE MR. P. C. DESIKA CHARI: (Burma: General) : In Burma also you have only one general constituency, both for Hindu and Muhammadan voters.

THE HONOURABLE SIR PHIROZE SETHNA : I stand corrected. Then, except in two provinces, namely the Central Provinces and Burma, in all other provinces there are separate electorates for Hindu and Muhammadan voters. And there is also special representation of European commerce in Bombay, Calcutta and Rangoon. The European Chambers of Commerce of these places have the right to elect one member each. With regard to the first feature, it is a matter of sincere satisfaction that responsible Indian opinion is growing in favour of joint electorates with reservation of seats for minorities. Now in the matter of the Council of State, assuming that the existing system of direct election is to be maintained, is it not possible to go further and do away with the principle of reservation of seats ? Can we not have a thoroughly and purely national system of representation, at least in the case of the Council of State ? Is it not possible to give at least a trial to such a system for sometime ? Here is an important avenue for exploration, and surely it deserves the careful attention of all those upon whom rests the serious responsibility of building up the Indian nation.

All these matters call for full and careful investigation and therefore my Resolution proposes that a Committee of both the Houses should be appointed to consider and report on them. It seems to me peculiarly appropriate and specially desirable that they should be considered by such a Committee. I have in the course of my speech, more than once referred to the Bryce Conference, it consisted of thirty members drawn from both Houses of Parliament. In South Africa also, in 1920, the South African Senate itself appointed a select committee to consider and report on its future constitution. Many of us have had personal experience of the actual working of this House ever since its establishment, and a considered report by a Joint Committee of this House and of the Legislative Assembly is bound to carry considerable weight with the Government of India and the Statutory Commission. We have every right to have our say in the determination of these important questions, and though no doubt every individual expression of views will receive the consideration to which it may be entitled a well thought out and carefully con-

[Sir Phiroze Sethna.]

sidered scheme about the future constitution, powers, functions, etc., of this House, prepared by some of the best minds in both the Houses will not fail to prove more valuable and fruitful, and be of immense assistance to the Statutory Commission, and ultimately to the British Parliament, when the existing constitution comes to be renewed, revised and reformed. Now, Sir, with your permission, I suggest the alteration of the word " Indians " into " persons ". It was by some oversight that the word " Indians " was put in. I suggest this alteration because I do not want the Committee to consist of Indians only. I have not said so in the early part of the Resolution where I ask for certain Members of both Houses to be appointed to the Committee.

I have proposed that there should be one or two outside members on the Committee with a view to secure the advantage of the knowledge of some men outside the Central Legislature who are known to be students of constitution and of constitutional theory and history. I feel not the slightest doubt that the Committee will perform a useful and valuable function and that its contribution to the solution of the question of the best possible second Chamber for this country will receive the most careful and respectful consideration of those whose duty ultimately it will be to give statutory expression to any changes that may have to be made in the existing constitution. I ask for the report to be submitted before 1st August 1928 presuming that the Royal Commission will arrive in this country after that date. If the Report is ready by 1st August, it may be considered by the Statutory Commission. With these words, Sir, I commend the resolution to the acceptance of the House.

THE HONOURABLE THE PRESIDENT: Resolution moved:

" That this Council recommends to the Governor General in Council the appointment of a Committee consisting partly of elected and partly of nominated non-official or official Members of both Houses of the Central Legislature with some persons outside the Central Legislature who are known for their study and knowledge of constitutions to consider and report on—

(1) the constitution and powers of the Council of State ;

(2) the qualifications of Members and voters thereof ;

(3) the constitution of the constituencies entitled to elect Members to the Council of State ; and on

(4) other incidental matters ;

so as to make the Council of State a proper revising Chamber.

The Committee to report on or before 1st August 1928."

THE HONOURABLE MR. P. C. DESIKA CHARI : Sir, I welcome this Resolution and to anticipate the objection that the Statutory Commission is coming out shortly and it is not desirable to appoint a Committee to go into these questions, I submit we must be doing some spade work and the Committee which is proposed to be appointed would be in a position to prepare all the materials necessary to put forward before the Statutory Commission.

Sir, before I go into the details of this Resolution I would submit that unless we have a full fledged constitution it is not desirable to have a revising Chamber, *i.e.*, a bicameral system of Legislatures is not desirable at all. My Honourable friend the Mover said the work of the Council of State is recognised and appreciated throughout the country but my own experience of the sort of appreciation which the work of the Council of State calls forth is that the

Council is regarded as an absolutely reactionary body which is ready to set aside all the decisions of the other House. I do not say that I am of that opinion but I do believe and my knowledge and experience of the country show that people generally regard it as a reactionary body which ought not to exist. (*The Honourable Sir Dinshaw Wacha.* " Question " !) And the reasoning generally seems to be this. Here the popular representatives have got obviously a narrow majority but really people think, and they are right in thinking, that there is no effective majority at all to represent popular views. Some of them go further and say that if you really make this a popular Chamber it will be redundant, in which case it is not desirable to have a Council of State : if you keep the Council of State as it is then an absolutely reactionary body like it is not necessary ; and so they argue it is not necessary to have a second Chamber at all. I think there is some force in this view which is to-day prevalent throughout the country. It is for this reason. In all countries where you have a parliamentary system of Government, the Executive is really responsible to the Legislature and there is a chance of the opposition shouldering the responsibility of office in a system run on really party lines. Unless you have a parliamentary system of government like that the only thing that non-officials can do is to do the work of criticism and I believe, taking into consideration the fact that they have not got the knowledge which is available to the official members, their criticism cannot be effective and they will not be doing as efficient work as the opposition in any parliamentary system of government. Now whether you have a unicameral system or a bicameral system—whatever it is—the Members will get divided into people who support the Government, that is, the pro-Government Party, and the Party which is opposed to the Government ; and if it is to be on these lines a second Chamber will not really do any effective or efficient work. My learned friend has been dealing at great length with the advantages of a second Chamber. I entirely agree with him, with this reservation, that unless you get a full-fledged constitution under which the Government is fully responsible to the Legislature, the second Chamber will not really be useful. Various views are held and I incline to the view that if a second Chamber is necessary even under the present transitional stage or with further reforms, while the Government is not fully responsible to the Legislature, then the proper course would be to have a system which has been accepted to be the best according to the latest authorities, *i.e.*, that the Lower House ought to elect the second Chamber not from among its own members but from among a class of people who have got the necessary qualifications outside. If that is done, a really efficient revising chamber can be secured and I think opinion even in England is coming round to this view, that the House of Commons ought to elect the House of Lords from among the peers. I think a system like that would be conducive to the harmonious working of the two Houses while at the same time ensuring the election of people who in the eyes of the Lower House would be just the proper persons to revise the views of the Lower House.

My learned friend has dealt with the various aspects of the question and it is not necessary for me to deal with them. I would only submit that in the case of Burma, especially, which has got a large population there is only one representative to represent all classes of people. My learned friend

[Mr. P. C. Desika Chari.]

instanced the case of the Central Provinces which also, I believe, is a fairly big province. If there is to be a really effective second Chamber, care should be taken to see that a proper number of members are elected from each of the various provinces ; otherwise it might very well happen that the views of a particular province will have to be specially brought to the notice of the House and, as very often happens, a solitary Member from a certain province whose activities have been called into question has absolutely no chance to meet some of those complaints which are urged against the particular province. For instance, Sir, this morning I tried to catch your eye : I do not know if I am right in referring to it : but Burma had been repeatedly referred to in support of the case for the continuance of the Criminal Law Amendment Act, and I tried my level best to catch the eye of the President and repeatedly got up to give my point of view about the troubles in Burma where there was gross abuse of the powers under the Criminal Law Amendment Act. But, unfortunately, Sir, the solitary Member from Burma was not able to secure the attention of the House and he could not give the opinion of a particular province and I could not comply with the request made by Sir Arthur Froom that the representatives of each province should come out and give the views of their own particular province. The points have been dealt with in great detail and I have no desire to exhibit my knowledge of constitutions in which I specialised in my college days and with which I have been keeping in close touch up till now. With these words I heartily support the Resolution.

THE HONOURABLE MR. H. G. HAIG (Home Secretary) : Sir, I feel some little difficulty in dealing with my Honourable friend's Resolution. On the one hand this is clearly a time when it is most important and desirable that attention should be directed to these constitutional problems in view of the re-examination of the constitution which is to take place shortly, and I think that a discussion in this Council is a valuable method of expressing and ascertaining opinion. My difficulty, however, is that the particular action which my Honourable friend suggests does not seem to me to be likely to lead to any very practical results. I shall develop that point in a moment. But before I go on to that, I am glad to see that my Honourable friend at any rate proposes in the new constitution to continue the Council of State and is a believer in the bicameral system. One cannot tell what views the Statutory Commission might take ; but personally it seems to me that the Council of State performs very valuable functions in the constitution as it stands at present. My Honourable friend is not one of those who believe in that old criticism of a second Chamber "If the second Chamber agrees with the representative house, it will be superfluous ; if it disagrees it will be mischievous." That is the kind of criticism that is always made by those who do not believe in second chambers ; and a good deal of the criticism which I think my Honourable friend Mr. Chari was inclined to level at the present Council of State was inspired by ideas of this character. It is obviously irritating to what calls itself the representative house if it finds another body which has the power of disagreeing, revising and reviewing its decisions ; but that, Sir, is essential in any bicameral system. The Committee which my Honourable friend suggests should be appointed is to look to the constitution

of the future. The task which it is asked to perform is to devise a true second Chamber for the new constitution. That is where my difficulty begins. How can we devise an essential organ of the constitution without knowing what that constitution is going to be? We can of course explore the experience of other countries. We can collect the various alternatives which my Honourable friend has already indicated to the House. But, Sir, when that is done—and I do not minimise the importance of that work—it remains after all a somewhat theoretical treatise on second chambers; and I cannot help thinking that we might perhaps be able to prepare, in the Home Department, a treatise of that nature, a constitutional treatise, which no doubt would be a very valuable thing for the consideration of the Statutory Commission.

Now, I shall deal with the question in a little more detail. As I have said my difficulty is how is this Committee to choose between these bewildering alternatives that it might be possible to follow? What is to guide its practical choice? How, for instance, is the Committee at this stage going to decide such a fundamental question as whether the Council of State should be based on substantially the kind of electorates on which it is based at present, or whether the Council should represent provinces on a federal pattern? My Honourable friend, I think, referred to the latter solution, but until the Statutory Commission has been here, and has considered what is the future general line of development in India, how is it possible to decide whether the Council of State should continue substantially on its existing basis or should be based on federal ideas?

Then again as regards the powers, the Council of State is a part and at present, I think, a very essential part of the balance of the constitution. Every constitution consists of a series of checks and balances interlaced and interacting. Now, Sir, how can we determine what should be the powers of the Council of State until we know what would be the powers of the other organs of the constitution, and whether a considerable check is required or a less effective check is required on other bodies? My Honourable friend mentioned the case of the American Senate. A second Chamber may on the one hand have powers so small as to be almost negligible; on the other hand it may have powers like the American Senate which are considerably greater than those of what we may call the Primary House. I think, Sir, under these circumstances the Committee which my Honourable friend proposes to appoint must in effect produce a purely theoretical report. It might be of value, I do not deny that the collection of material or the reflection on constitutional theory is of great importance, but I think that the material could be collected in a much simpler and less expensive manner. My Honourable friend referred once or twice to the Bryce Committee which was appointed, I think, to consider the revision of the constitution of the House of Lords. But that, I submit, is not a true analogy with the conditions that are about to face us. That Committee had to consider one limited point. There was an old founded constitution in perfect working order and all it had to consider was in that constitution what should be the position of the second Chamber. But here, Sir, we are about to have a fundamental re-examination of the whole constitution, and to attempt to come to a conclusion as to the position or functions of the Council of State until that re-examination has taken place would, I feel, not be a feasible proposal. What I think we have to

[Mr. H. G. Haig.]

recognise is that there is probably no such thing as an ideal Second Chamber. There are a great number of alternatives, and the particular alternative to be chosen is determined by the rest of the constitution. It must be an alternative that will take its part and fit into a living constitution. I hope, therefore, that after the discussion in this Council, my Honourable friend will not find it necessary to press his Resolution to a division. I can assure him that the discussion in this Council will be brought to the attention of the Statutory Commission when it comes to this country.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, I rise not to offer any definite opinion on the motion before this House but merely to make the position of my party clear in this matter. The Honourable Mr. Haig has rightly pointed out that the Resolution tabled by Sir Phiroze Sethna definitely commits him to the theory of a bi-cameral Legislature for India in future. That is a position, Sir, to which I am not prepared to commit myself. At the present time, the popular party as well as the Government are both engaged in the pastime of constitution-making. The Government, whether it confesses it or not, is actively making preparations to furnish the coming Royal Commission with materials and the Indian National Congress has appointed a Committee also to frame a constitution to be placed before the Government or the Legislature or such other body as it chooses as its demand for self-government for this country. It may be, Sir, that we may come to the conclusion that we do not want a second Chamber at all. It is a possibility. It is clear that the whole country will disclaim any second Chamber of the kind that we are now in. I have no doubt about it. There is not one man who has got the progress of the country at heart that would vote for a second Chamber of the character of the Council of State as it is at present.

THE HONOURABLE SIR DINSHAW WACHA: What is meant by the whole country? Possibly the Congress is the whole country according to the speaker.

THE HONOURABLE MR. V. RAMADAS PANTULU: I know Sir Dinshaw Wacha is not now with the country. There was a time when he had faith in himself and in his country. Now he is a changed man.

THE HONOURABLE SIR DINSHAW WACHA: I am not at all a changed man. I am as progressive as ever I was. Because I do not agree with some of these Congress people, therefore I am a changed man. Nonsense. I must certainly protest against this sort of spiteful criticism.

THE HONOURABLE MR. V. RAMADAS PANTULU: I am very glad, Sir, for the assurance given by my Honourable friend that he is very progressive and I hope that by the time the Royal Commission comes, he will give very progressive evidence before the Royal Commission as he has told the House to-day he is working for the progress of this country. I wish him long life, I wish him more progressive ideas.

THE HONOURABLE SIR DINSHAW WACHA: I do not want your wishes on that.

THE HONOURABLE MR. V. RAMADAS PANTULU: However, that is an aside.

Apart from that, Sir, the position is, as the Honourable Mr. Haig himself says, the question of a Second Chamber is part and parcel of the entire constitution and it would not be practicable or feasible for this House to commit itself in advance to any particular scheme. Apart from that, the kind of Committee proposed by the Honourable Sir Phiroze Sethna is not a Committee that we would like to set up to report on the constitution. I will not say more than that the committee does not commend itself to me as a proper body to report on a matter of this kind. For both these reasons I would make it very clear that, so far as we congressmen are concerned, we have no opinion to express on this motion and that our attitude is one of neutrality. Speaking for myself, I would, say one word. My friend Sir Phiroze Sethna has really put forward a very comprehensive proposal in a very interesting speech and some of the suggestions made by him are really very useful. He might have referred to one recommendation of the Bryce Committee to the effect that the House of Lords should be elected by the House of Commons in future. If there is to be a Second Chamber in this country, I for one would advocate the election of the Second Chamber by the First Chamber, not from members of the first Chamber themselves but from outside. That is a very interesting scheme which one of the latest constitution writers, Mr. Roberts, on Second Chambers, has put forward with a wealth of argument. Several methods were tried in various countries. Direct election in Australia proved a failure, nomination in Canada has also proved a failure. The System of indirect election was attempted elsewhere but equally failed. The Norwegian constitution seems to furnish a suitable model. And the latest constitution writers seem to favour the idea of a First Chamber to act as an Electoral College to elect the second chamber. I for one would advocate that opinion before any Committee that may inquire into the matter. Sir, as matters at present stand, I am not in a position to vote either for the proposition or against the proposition. I would keep an open mind and if a satisfactory Second Chamber is vouchsafed to us and Government suggests ways and means to work it as a useful Second Chamber we shall consider the proposal. With these words I would leave the matter to the House.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab : Nominated Non-Official) : Sir, I support this Resolution to a certain extent, though I have not got the same ideas as my friend. I think, Sir, that we have taken this constitution from England and our House, if it was changed, ought to be changed in the direction of the House of Lords. Those men, Sir, who have to stand for election, naturally, to please their constituency so as to call themselves popular, have in season and out of season to vote against the Government as we are seeing every day.

THE HONOURABLE MR. P. C. DESIKA CHARI : And some are in season and out of season in favour of Government.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : I was coming to that also, that although the members who are nominated are of course quite allowed to vote on whatever side they like all the same they sometimes have to think of the Government also.

So, I think, Sir, if there is going to be any reform of this House, it ought to contain those gentlemen who have got a real stake in the country. (*An*

[Sir Umar Hayat Khan.]

Honourable Member: "Hereditary".) Yes, hereditary Chiefs, Nawabs and other people of some standing. They should neither have to do anything with any constituency nor should they look up to the Government for any favours. If such independent people are taken in this House, it will be a very valuable Chamber indeed, and if any Committee is going to be appointed, as proposed by the Honourable the Mover, I hope it will take into consideration the view I have placed before the House to-day.

THE HONOURABLE SIR PHIROZE C. SETHNA: Sir I have not much to say in reply. I had brought forward this Resolution with a view to assist the Government, so that if a Committee were appointed to go into the question of the reform of this House, it might submit a well considered report which might greatly help both the Government as well as the Statutory Commission that is likely to be appointed shortly.

My Honourable friend, Mr. Chari, expressed the opinion that the country at large had not much to say about the work done by the Council of State. Perhaps he is right. I have often heard it remarked that the best course would be either to end the Chamber or to mend it. I am not one of those who would like to end it, as I find several advantages in the bicameral system, and I certainly believe in mending it. It unquestionably requires mending and there is no doubt about it, judging from our experience of the last seven years.

My Honourable friend, the Home Secretary, said that it would be a cheaper method of meeting my demand if the Home Department prepared a treatise which, I gather, they intend to do. I am quite aware, Sir, that the Department concerned is perfectly able to put up a treatise explaining the whole situation to the Statutory Commission when it arrives, but the point is, will the Home Department put up a treatise which will contain the views of the Government of India themselves or also the views of responsible Members of either House of the Legislature of whom I have suggested a Committee should be appointed?

My Honourable friend Mr. Pantulu has told us that he is not in favour of my bicameral Chamber.....

THE HONOURABLE MR. V. RAMADAS PANTULU: No. I merely said I want to keep an open mind.

THE HONOURABLE SIR PHIROZE C. SETHNA: Well, he may certainly keep an open mind. By the time the Committee sits, that is if one is appointed, he will I hope, have no longer an open mind, but a definite mind, that a single Chamber will suffice for the purposes of our work; and then if the Committee is there, he can place such a view before it. He also urged that in his opinion the best Second Chamber would be the one whose Members would be selected by the Members of the lower House, but that they must be other than themselves and not one of them a Member of the Lower House itself. That again, is a very important point which might be considered by the Committee. However, Sir, I see that the Government are not favourably disposed towards this motion, and the only consolation they offer is that they will place the whole debate which has taken place to-day before the Statutory Commission. Therefore, I have nothing more to say but leave my Resolution in the hands of the Council.

THE HONOURABLE THE PRESIDENT : The question is :—

"That the following Resolution be adopted.

'This Council recommends to the Governor General in Council the appointment of a Committee consisting partly of elected and partly of nominated non-official or official Members of both Houses of the Central Legislature with some persons outside the Central Legislature who are known for their study and knowledge of constitutions to consider and report on—

(1) the constitution and powers of the Council of State ;

(2) the qualifications of Members and voters thereof ;

(3) the constitution of the constituencies entitled to elect Members to the Council of State ; and on

(4) other incidental matters ;

so as to make the Council of State a proper revising Chamber.

The Committee to report on or before the 1st August 1928'."

The motion was negatived.

RESOLUTION *RE* EXPULSION FROM THEIR HOMES BY FRONTIER TRIBESMEN OF SIKH AND HINDU RESIDENTS OF BRITISH TERRITORY ON THE NORTH-WEST FRONTIER.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab : Sikh) : Sir before I move my Resolution, I crave your permission to make a slight verbal change in the second line of my Resolution, and I want to substitute the word "tribal" for the word "British".

THE HONOURABLE THE PRESIDENT : The change that the Honourable Member proposes to make is very important. I am very doubtful indeed whether I should have been able to admit the Resolution if he had worded it in the form in which he now proposes to put it, namely, if the word "tribal" had occurred for the word "British" territory. At this late hour, in any event, I cannot allow the Honourable Member to make any alteration in the terms of his Resolution.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI : Sir, in that case, I shall be placed at a great disadvantage. Very well, Sir, with your permission I move the Resolution which stands in my name as it is. It reads thus :

"This Council recommends to the Governor General in Council to issue such orders as may be necessary to enable the Sikh and Hindu residents of British territory on the North-West Frontier, who have been recently expelled by force from their homes by the frontier Muhammadan tribesmen, to get their properties and business restored, to ensure the future safety of their persons and properties and freedom to observe their respective religions."

Sir, I hope that every Honourable Member of this House is fully aware of the fact that in the last month or two a large number of Hindus and Sikhs consisting of men, women and children have been expelled from the tribal area which lies between the frontier districts of the British territory and the Afghanistan territory. One of the causes which led to this unfortunate occurrence is that the recent controversy over religions has gone on to such a high

[Sardar Shivdev Singh Oberoi.]

pitch to the great misfortune of the people, that the preachers of the respective religions have begun to use very vicious, objectionable and scurrilous language in not only criticising the principles of other religions, but in criticising even the founders of other religions. Such sort of preaching, Sir, to my mind, is the most irreligious act that any preacher can commit under the cloak of religion. I do not think for a moment that any religion can be fairly propagated by using language which is not at all warranted by the principles of that religion, which is not at all permitted by the good sense of humanity and by the ordinary moral laws. And what should I say about the filthy and scurrilous language used against the founders of the different religions? I do not think the preachers who are engaged in this sort of vilification of other religious founders are truly representing the religion to which they belong or are really serving the cause of their own religion. In my view, Sir, they set a bad example by doing things which the principles of their religion do not warrant them to do.

Recently during the last two or three years a pamphlet, named *Rangila Rasul* was written by a preacher of the Arya Samaj cult. I have not been able to read that book because that book was proscribed by Government for the last two years. From what I have heard and from the passages that I have read, I certainly think this book was of the most objectionable and of the most vicious character. No man with any moral sense can for a moment appreciate the passages written in that pamphlet. That author was convicted by the first Magistrate to two years' imprisonment. He appealed to the High Court and his appeal was accepted by the Honourable Justice Dalip Singh not on the ground that whatever he had written in the pamphlet was right—the Honourable Judge had clearly deprecated the language in which the pamphlet was written—but on some legal ground. The Honourable Judge decided that section 153-A did not apply to that case and he accepted the appeal and acquitted the man. This naturally raised a storm of agitation amongst the Muhammadan community. There were meetings held from one end of India to the other, from Peshawar to Calcutta, condemning the judgment of the High Court of the Punjab as very much damaging to the high esteem in which the Prophet is held by Musalmans. They demanded that the author should be convicted and they also demanded that the Honourable Judge who decided the case should have the good sense to resign his seat on the Bench because he made such an order. This fire was ablaze throughout the length and breadth of India. I would say that every man who has veneration for his Prophet would certainly be enraged at the scurrilous writings against the personality whom he holds in esteem and veneration. This fire which was ablaze in the British territory went beyond the British territory into the frontier parts of India. Of course, I understand there is a tribal territory between the border line of British territory and also of the Afghan Government. Of course, it is a fact that those Maliks or Sardars are neither under the British Government nor under the Afghan Government. But it is also a fact that those Sardars and Maliks and leaders of those tribes are receiving regular subsidies from the British Government and they have friendly connections with our benign Government. Because for strategic purposes the British Government have constructed certain railway lines. ....

THE HONOURABLE THE PRESIDENT: The Honourable Member is now beginning to get beyond the Resolution which I said I should not allow him to move. Will the Honourable Member bring himself back across the frontier?

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: I am in a very bad plight, Sir; in fact in the same plight as those people who have been exiled from the frontier (Laughter), of course I must confess that it is a mistake that I did not know that those people who have been exiled are not from the British territory but that they are from the tribal area. If I am allowed to proceed, I may make a few remarks.

THE HONOURABLE SIR DENYS BRAY: (Foreign Secretary): On a point of order, Sir, or rather explanation. I do not know whether it will be helping the debate at all, if I correct the Honourable member when he refers to the tribal territory as not being under the British Government. Most definitely it is part of India.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: Well, Sir, I am very much obliged to the Honourable Member for coming to my rescue and helping me by saying that the tribal part of the country is part of British India.

THE HONOURABLE SIR DENYS BRAY: No; not part of British India, but part of India.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: Of course that is a position which has arisen from my mistake. I do not think I will be justified in taking any more of the time of the House in dwelling upon this Resolution. But I would say one or two words and would ask the Honourable the Foreign Secretary to be kind enough to answer when he makes a few observations on the Resolution. I would like to have a statement about the conditions of the men who are exiled from that area on account of the agitation which took place on account of the *Rangila Rasul* case and also I would like that he should inform the House as to what the Government wishes to do in the matter of helping the people, for the sake of justice and humanity.

THE HONOURABLE THE PRESIDENT: Resolution moved:

"This Council recommends to the Governor General in Council to issue such orders as may be necessary to enable the Sikh and Hindu residents of British territory on the North-West Frontier, who have been recently expelled by force from their homes by the frontier Muhammadan tribesmen, to get their properties and business restored, to ensure the future safety of their persons and properties and freedom to observe their respective religions."

THE HONOURABLE SIR DENYS BRAY: Sir, I find myself in very great difficulty indeed. I cannot conceive how I am to speak on this motion at all unless I am able to describe the conditions in the tribal territory where the Hindu population lives. If you, Sir, will allow me that indulgence, I shall no doubt be able to put the House in a position to understand the plight of these Hindus and to understand also the action and attitude of Government. But unless I am able to describe the background and give the atmosphere in the tribal territory, nothing I could say would enable the House to realise the gravity or even the very nature of the problem.

The scene, as the Honourable Mover has now realised, is not laid in the administered districts of the Frontier Province which are British India. It is

[Sir Denys Bray.]

laid in that belt of mountainous territory which lies between the districts and Afghanistan. It was indeed entirely wrong of the Honourable Mover to say that neither the British Government nor the Afghan Government had any concern with these tribes. It is, Sir, a historical fact dating from 1893 that all tribes on this side of the Durand line are irrevocably within our sphere—tribes for whom the British Government are solely responsible. That is a matter of historical fact, and it is essential that I should make it absolutely clear. Their territory is not British India, it is true, but it is India; under our political control, but, save here and there, unadministered.

4 P.M.

Except in the far North, it is occupied from end to end by Pathan tribes, Moslems of course to a man; tribesmen living in a tribal state of society, here under chieftains, there under Maliks, but almost everywhere with one man as good as every other, and the bullet in his rifle as the final arbiter between them. For in the measure of independence which we, like our predecessors the Moghul and the Sikh, have found it convenient to leave these tribes, we are excluded (often indeed by actual engagements) from direct interference in their internal affairs, more especially of course in all matters touching custom and religion. To the appeal of religion the tribes are, as all the world knows, acutely sensitive. As for custom, so revered is it and so binding that the ordinary transfrontier Pathan often enough cannot distinguish it from religion. Now though tribe is often warring against tribe, clan against clan, tribesman against tribesman, it would be altogether superficial to regard the tribal state of society as anarchy or tribal law as lawlessness. For, ancient custom and tribal law go to the making up of the Pathan code of honour which regulates all Pathan conduct, and the wrath which breaches of the code arouse in the tribal community is a very powerful and effective factor in the regulation of life and conduct in the tribal area along customary lines.

Foremost among the principles in this Pathan code of honour which have the sanction of ancient custom behind them, is the duty of protection of the guest and the sojourner within the tribe—conspicuously of course the protection of the tribal Hindu. Though the Hindu is obviously not a member of the Moslem tribe, he is a member of the tribal system. For generations he has lived—a handful of Indians have lived in every clan of every tribe as shop keepers, money-lenders and the like; valued, respected and indeed essential members of the tribal system; jealously protected by the tribe; their blood feuds commonly espoused by the Malik or by the tribe.

Here then is the background which will, I hope, enable the House to realise something of the true nature of the picture of what has recently happened. To the statement I made the other day in another place on the bare facts, I have little to add, nothing to subtract; and I therefore shall not scruple to plagiarise from myself. Indeed in the very short speech which the Honourable the Mover made he began to refer to the facts very fairly, and I am not sure that I cannot condense this particular part of what I want to say even more than I had intended. It would not be altogether correct to say that the contagion of bitterness over the Rajpal pamphlet spread from the frontier districts to tribal territory; for the exciting cause in the tribal territory was the arrival of a famous

trans-frontier Mulla, fresh from the Haj and fresh from the fulminations down-country against this vile pamphlet with its vile title. Under the lashings of his indignant tongue, first the Kuki Khel and Zakka Khel expelled their Hindus. Fired by their example the Shinwaris, who up till then had stood out against expulsion, insisted on their Hindus leaving. They too, like the Kuki Khel and Zakka Khel, against their will, because dead against their interest and even more so because against their Pathan code of honour, began to expel their Hindus into British territory. After some had gone they endeavoured to keep the others back. A few Hindus on being expelled were roughly handled in the Khyber; and one Hindu was stabbed and robbed of considerable property; but it was recovered in full by the Afridi Khassadars themselves. Thereafter the political authorities took elaborate precautions to ensure the safe passage of any Hindus evacuating tribal territory—whether evacuating it under compulsion, or from fear, or sympathy with their fellows. There was at one time a dangerous movement afoot among the Afridis to bring the whole of the tribe into line. But under political pressure an Afridi Jirga decided towards the end of July to suspend further action against their Hindu neighbours pending the decision on the Vartman case in the Punjab High Court. Next week, however, several families who had been living in the security of the Landi Kotal sarai moved to Peshawar. In all some 4 or 5 or 6 hundred Hindus, men, women and children, took refuge in British territory. By now the various tribal Jirgas, the Kuki Khel alone excepted, have been induced by the political authorities to agree to the return of their Hindu neighbours and have undertaken in writing that their return shall be honourable and unmolested.

Unfortunately recent inter-tribal fighting in Tirah has retarded the further clearance of this ugly episode, for the Afridis have been too preoccupied with their own very serious losses to get down to business over it.

Now, Sir, the return of the Hindus to their old position of respect in tribal territory is of course first among the aims of the political officer in the matter. Having said this, I am not quite sure that I have done them justice; for throughout it has been the foremost aim of the political officer to localise the trouble. For it is not to be thought that it was in the Khyber alone that this scurrilous pamphlet or its scurrilous title had publicity. One heard of it as far as Swat and Bajaur on the one side and as far as Waziristan on the other, and everywhere the political officer was throwing his influence into his role of peacemaker. Everywhere he succeeded save in the Khyber alone; for what trouble there was in Swat had another origin.

Perhaps I have said enough to persuade first the Honourable Mover and then the House that the motion he has presented to us is really superfluous. For this House to seek to move the Governor General to issue such and such orders for the clearance of this miserable business is surely superfluous. For this House or for government to suggest to the frontier official that his aim is wrong or that the methods he has been pursuing are wrong would be not to further the object we all have in view, but to hamper it. The frontier officer is very alive to the danger, very alive to the need for a solution and for peace, and alive also, as the Honourable Mover could not possibly be, to the limits imposed upon his powers of solution. I am the more sorry the Honourable Mover cut his speech so short, for I was anxious to know from him what measures he had

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in view. I had almost hoped that he was going to develop the theme of the impotence of Government in this matter, and the necessity, as so many newspapers have argued, of using force and of bringing armies up from down-country to reinforce the army already on the frontier, so that the Hindus might be escorted back to their homes to live their lonely lives in their old homes under the protection of the bayonets of the Indian Army. Now that suggestion has meaning and body in it only, if the Honourable Mover or those who espouse it espouse at the same time a thorough-going Forward Policy right up to the Durand Line — a policy which will bring the whole of this area of which we are now speaking under the direct administration of the British Government, and turn what is now India into British India. If the Honourable Mover has very courageously adopted that policy, I trust he will proclaim it from the housetops; that he will go abroad and preach it. For there are many—and the number includes men of ripe frontier experience—there are many who think that therein lies the only final solution of the frontier problem. But as matters now stand, in the state of semi-independence in which we have left these tribes, such heroic measures are denied us. To use force in this connection—to suggest the use of force—implies a misunderstanding of the conditions. A carpenter does not use a hammer to drive in a screw: if he does, the screw is soon likely to fall out again. If the Hindu were indeed put back in his old home by means of an army, I am afraid his home would not be a permanent one. Perhaps I can make my point a little clearer if I take the converse case of Hindus kidnapped from British territory and taken by tribesmen across the frontier. Here indeed force is or may be a very proper means of securing our end. At any rate we often resort to it. The last big case of this kind which comes to my mind was the kidnapping of a large Hindu marriage party—seventeen unfortunate victims in all—who were taken across the frontier a couple of years ago, and whose restoration was secured by the bombing of the Faridai Mahsud country, a bombing which was continued (unhappily not without grievous loss) until every single Hindu was restored without ransom and the tribe was chastised as a deterrent for the future.

But the present problem is of course quite different. We are dealing with the return of isolated Hindus in peace and honour to their scattered homes in tribal territory. In the past they have owed their position of respect and amity in the tribe to the force of custom, to their intrinsic utility—and the services they render to the tribal system, and to their own personal influence which is often surprisingly great. Armed intervention on their behalf would obviously destroy that atmosphere of tolerance and confidence in which alone the resumption of the old life would be possible. Now, tolerance and confidence cannot be brought about by force, so long as we have tribal territory in its present condition of semi-independence. All the King's horses and all the King's men could not induce it; yet it is an essential ingredient in any real solution of the case, for no Hindu is going to open his lonely shop in tribal territory without that confidence and tolerance. To restore it, the traditional forces, the economic forces, already at work, must be allowed their full play; and the Honourable Mover may rest assured that the frontier officer, who has been deeply moved by the plight of these unfortunate men, is working steadily towards that end. And I would say here what I said the other day. That the

breach will be healed, and that soon, I am confident, provided always that nothing untoward arises from any malicious or thoughtless intrusion from without. It says something, I think, for the scrupulous care with which I weighed my words, when I find that Muslim newspapers have assumed that I was talking here only of Muslim intrusion and that Hindu newspapers have assumed that I was talking only of Hindu intrusion. In truth—and here I would underline every word—I was, and I am, afraid of both.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir, I should like to make only a few observations on the Resolution. As far as our information goes, the trouble was started by one Sahibzada Kakai of Panamazi, who, I believe, is a resident of British territory, in the Peshawar District. It was he who on or about the 5th July went to the tribal area and created this trouble. I am grateful to the Honourable Sir Denys Bray and to the political authorities for the influence that they have exercised and are exercising in the restoration of good will towards these poor people who have been exiled. My only object, Sir, in making observations on this point is to enquire whether or not the Government has taken any action against this Sahibzada Kakai who has been the originator and the culprit in this thing.

THE HONOURABLE THE PRESIDENT: The Honourable Member is now beginning to wander outside the Resolution, I am afraid. It does not deal with the origin of this problem. The Resolution deals solely with the solution of it.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, my object in bringing this fact up was only to bring it to the notice of the House and to the notice of the Honourable the Foreign Secretary because this is a matter that is connected with British India and this person. Sir, who has inflamed the tribal territory is likely to inflame the British territory as well and so I brought up this matter here.

The second observation, Sir, which I want to make is that under the influence of the political authorities the Maliks agreed to take back these exiles but some Khilafat volunteers on or about the 19th July went there again and they kindled the fire again and then there was a *jhugra* and, although the Maliks agreed to take them, there was a great excitement created by these Khilafat volunteers and the people were made to disobey their Maliks. The Maliks are under the influence of the Government of India and in case their influence is lost in that territory and people from the British territory go there and create trouble, I think, in the interests of the administration of India, those people, Sir, who have been the cause of this trouble ought to be brought to book.

The third observation that I want to make is that the Honourable Sir Denys Bray has said that in the case where the lorry was looted within British territory and where a man was severely wounded, whatever compensation for money and goods was required has been paid to the afflicted persons. As far as my information goes, Sir, the offenders did agree with the Political Department to pay the compensation but my information is that the compensation for the goods, which is said to be about Rs. 4,000, has not yet been paid. I humbly draw the attention of the Honourable Sir Denys Bray to this and would request him kindly to find out whether the agreement which these tribal people arrived at with the political authorities has really been carried out.

[Lala Ram Saran Das.]

Another thing, Sir, which I want to suggest in connection with the observations made by the Honourable Sir Denys Bray is that the trouble was created by Mullah Chaknawar, an Afghan Subject, who was returning from the Haj back to his own land. In that connection, Sir, I beg to say that the Government of India ought to take up this matter and move the Afghan Government to see that all the people who pass through British territory ought not to diffuse poison on their way. I think this sort of solution can be easily found and in future such people ought to be prevented from performing this sort of Haj. The tribal area is under the British sphere of influence. It is purely a technical way of saying that it is not British territory. Jirgas have been appointed in this tribal territory at the instance of the political agents and those jirgas have been giving decisions and in various other ways have been influencing those Maliks. As I have been to the country once I have realised that they are very much afraid of the British Government and anything that the British people want and the British authorities desire, they will very readily agree to. And so, Sir, I simply beseech the Government kindly to try and find some sort of employment or land for these exiled people who are now in British India. I think some sort of sympathetic treatment should be accorded to those people who can go back or do not want to go back.

One thing, Sir, and I will finish. And that is that the Honourable Sir Denys Bray made an observation that the people in the tribal territory were simply shopkeepers, money lenders, and so on.

THE HONOURABLE SIR DENYS BRAY: And so on.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: But I want to inform this House that there are a number of people who are landholders and they are agriculturists themselves. If I am wrong, Sir, I hope the Honourable the Foreign Secretary will put me right.

With these observations, I beseech the Government to do what they can to assist the sufferers.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN (North-West Frontier Province: Nominated Non-Official): Sir, I do not know why my Honourable friend Rai Bahadur Ram Saran Das says that the man who preached is from British India. It is known all over India that the man who preached was a resident of Afghanistan who was on a pilgrimage and was passing through....on his way back to preach among the independent tribesmen. Once a man is beyond Dakkha he is in Afghan territory. And if he stops at that place and if he preaches anything there, well it is impossible for anybody to stop him from preaching anything to his own people and there might be some of the frontier people who always carry on trade and they might have heard him at Dakkha, so it is an impossibility to stop a man from preaching something of his own religion outside British India.

Lala Ram Saran Das said another thing; that the lorry was looted in British India. I doubt that statement. No lorry has ever been looted in British India.

That statement seems to me to be quite incorrect.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, the motor road or the trunk road are to all intents and purposes considered to be within the British territory, and if any losses occur on those roads, those losses are made good by the Government through the Khassadars who have been employed for that very purpose, and on this trunk road which is under the control of the British Government the motor lorry was attacked.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: Well, Sir, I do not admit that fact at all.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: But it is a fact.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: At any rate, I happened to be on the frontier in those days, and I have not heard that any motor lorry was looted on that road. I do not know if some vernacular news paper had made up a story to that effect, but the whole thing seems to me to be a mere myth and nothing else.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Ask the Political Secretary about it, and he will tell you the facts. See the papers also.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: I have also seen the papers, and I know what it is. However, I can assure my Honourable friend Lala Ram Saran Das that if he leaves the matter to be decided entirely by the Honourable Sir Denys Bray and by the Honourable Sir Norman Bolton, both of whom have a very extensive experience of the North-West Frontier, and who know the Pathan custom very well, if things are left to them instead of carrying on a discussion in this House. I think they will be able to effect a far better and much more satisfactory settlement in the matter. If you discuss things here, it will surely embitter the feelings of the Afridis. The discussion here will do no good at all; it will merely act as a barrier in the way of effecting a speedy and satisfactory settlement; and you will be placing impediments and dfficulties in the way of those Hindus who have now taken shelter in Peshawar. To my mind, my friend the Honourable Rai Lala Ram Saran Das has spoken enough and he ought to leave the matter in the hands of the Honourable Sir Denys Bray and the Honourable Sir Norman Bolton, both of whom are very sympathetic officers, and I am sure they will do everything possible to bring about a speedy and satisfactory settlement. I would advise my friend not to insist on discussing things here.....

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: I have only made a suggestion to the Honourable the Foreign Secretary.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: Then, Sir, there is another thing about which I want to inform both the Honourable the Mover as well as the Honourable Rai Bahadur Lala Ram Saran Das, and it is this. The Afridis in their own country consider themselves quite independent. Now, some of these people, the Hindus, and Sikhs, are no doubt land-owners, but their holdings are very small indeed. Their chief occupation is money-lending and keeping the money of the Maliks. If some of the Maliks have spare money, it is deposited with some of these Hindus and Sikhs who are called sowcars. I may tell the Council that one who does business in lending and keeping money is called a sowcar. The principal business of these sowcars on

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the frontier and across the border is lending money to the Afridis on good security, so that the Afridis might be able to buy their rifles, ammunition, bullocks for ploughing purposes, and so on. That is the chief business which these sowcars carry on across the border.

I can again assure my friend that if he were to leave things entirely to the Honourable Sir Denys Bray and to the Honourable Sir Norman Bolton, instead of embittering the feelings of the Afridis against these Hindus, things will be settled quite satisfactorily. The Afridis themselves will feel the pinch in a month or two, because, after all, according to the Pathan custom they cannot borrow money from their own people, and therefore these people will certainly feel the absence of the Hindus there. Their religion does not allow them to transact money-lending business among themselves, and therefore no business would be carried on. Therefore, these Pathans will never be able to remain for long without these sowcars. If things are left to themselves, I can assure my Honourable friend that in a month or two the Afridis will themselves take these refugees back to their territory and give them much better treatment. Therefore, Sir, there is no use of embittering the feelings of these Afridis. Of course, you might be able to take these refugees back under British bayonets to Terah. But what will be the result ? You cannot keep a very big army in Terah. It will be a very big business to do so, because when it comes to the question of payment to the troops employed there, my friend will be the first person to complain about it. Of course, these people can remain under the protection of British bayonets, but the Afridi is a self-respecting man and he will consider it as undue interference in his own tribal area, and it will embitter his feeling to such a degree that he will never permit any Hindu or Sikh to remain there under the British bayonets and carry on his business. The Afridi will have nothing to do with these Hindus and Sikhs if they remain there under British bayonets ; he will simply boycott these people, and he will be quite justified in doing it. It is the same here. If any British subject does not want to buy or make purchases from a certain shop, nobody can compel him to make his purchases from a particular shop. According to law, I think everybody has got that right of buying things from whomsoever he likes.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : The British are there to protect the weak.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN : It is not a question of weakness at all.

Now, Sir, three solid days were given to these people to dissociate themselves from the writings of Rajpal. They were given time, and the Maliks told these people that they could remain in the territory if only they dissociated themselves from the irreligious writings of Rajpal.....

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I want to point out that on the 18th July all the Hindus expressed their regret and they condemned the writings of Rajpal.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN : I can assure the Honourable Member that before their expulsion they were given three days' time both in Tirah and in Swat, and one of the conditions was that they should dissociate themselves from the writings of Rajpal.....

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: They did so.

THE HONOURABLE THE PRESIDENT: The Honourable Member has constantly interrupted the speaker. We shall never be able to finish the debate unless the Honourable Member from the Frontier Province is allowed to finish his speech. He has two more minutes.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: I quite admit that they did dissociate themselves after their expulsion, but they did not do so when they remained across the border.

It was not true that all the Hindus were turned out from other tribal land in Swat. One or two villages may have committed this mistake. The Hindus came over from Swat to Hoti in British India and were comfortably accommodated there. I must say that in Hoti, the Hindu community of the place, under good guidance, prevailed upon them to hold a meeting and condemn people like Rajpal who had maligned our Holy Prophet. After the Hindus condemned the action of those who attacked the Prophet, they were taken back after about ten days absence.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Was it through the influence of the Honourable member?

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: That may have been so; it is immaterial on whose advice they were taken. The fact remains that they were taken back. Nearly three days' notice was given to these people. But I am sorry that my Honourable friend does not admit that. I can assure him that that was a fact. I do not for a moment justify the expulsion of the Hindus. Far from it, I say you cannot expect from a country like the Afridi country, inhabited by people who are of the most irritable and excitable nature anything more than that. They are not at all educated. They know how to say their ordinary prayers. They have not sufficiently learnt their religious books. They are of such a nature that they can be easily misled. I do not see that the fault rests entirely with the Afridis. They gave three days' notice to the Hindus to apologise and nothing more can be expected from them. These Hindus have been living in the tribal territory from a very long time and we have been helping them for generations. We considered the Hindus part and parcel of our tribe. We have given them all the facilities, perhaps even more than we give to our own kith and kin. An Afridi can be shot but not a Hindu trader. In spite of so many facilities offered, the Hindus of the tribal area did not dissociate themselves from the scurrilous writings of the people in the Punjab against the Prophet and that was why they were suffering.

THE HONOURABLE THE PRESIDENT: The Honourable Member has exceeded his time. I am afraid we have had a considerable amount of repetition, and I cannot in those circumstances allow him to go on.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: With these remarks, I will advise the Honourable mover and the Honourable Lala Ram Saran Das to leave this matter in the hands of the Honourable the Foreign Secretary and the Honourable the Chief Commissioner, North-West Frontier Province. Both of these gentlemen though silent but great men

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of action will very well succeed in restoring cordial relations between the two communities as before.

THE HONOURABLE SARDAR SHIVDEV SINGH UBEROI: Sir, I feel very badly handicapped because I was not allowed to make a verbal change. Candidly I do not like to waste the time of the Council by speaking on a wrong basis or by building a superstructure on wrong foundations. That was why I could not open my mind as regards the line of action to be taken by Government and which was in my mind. However, I feel gratified to hear from the Honourable the Foreign Secretary that the political officer has his aim in sending back those Hindus and Sikhs who are in exile back to their homes. I am also gratified to hear him say that the frontier officers of the Government are doing their best to negotiate in the matter and that it is hoped that the matter would be most favourably and expeditiously settled in a way that will permit the Hindus and the Sikhs to go back to their homes and get back their properties. With all respect to the Foreign Secretary, I must say that he has misread my mind when he stated that the idea in my mind in bringing this Resolution was that the Government should have recourse to military intervention or that the Government should send back the Hindus and the Sikhs to their former homes with the help of an army. Perhaps, because I belong to the Sikh race, which is noted for military valour, he has come to the conclusion that I would advocate military intervention. Far from it, I am by profession, by my creed and by my principle against war. I am quite sure that the British officers do possess sufficient intellect and sufficient experience to deal with such matters of a very delicate nature by negotiations and without military operations. I also know that the Government feel that in dealing with the frontier tribes, they should come to a settlement without having recourse to arms in the very first instance. They want to try negotiations and when they fail in that, it will be time enough to think of a military expedition to get their object fulfilled. I wish to make it quite clear that it was never my intention to advocate military intervention, nor do I think it is a practicable proposition.

I only wish to say a few words about the remarks made by the Honourable Major Akbar Khan. I know it as a fact that in the Afghan frontier in Hoti Mardan, he is very popular among the non-Afghans. He has given full liberty to non-Afghans, both Hindus and Sikhs. I want to put one question to him. He said that three days' notice was given to the Hindus. I wish to enquire whether any notice was given to the Sikhs. Why were the Sikhs yoked with the Hindus. The Sikhs never carried on any propaganda against the Prophet and they never wounded the susceptibilities of the Mussalmans.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: With your permission, Sir, may I answer that question? My Honourable friend does not seem to know that the Afridis do not make any distinction between Hindus and Sikhs. They call all of them Hindus. They do not know the difference between the two. Everything that was done, was done through ignorance.

THE HONOURABLE SARDAR SHIVDEV SINGH UBEROI: I am sorry I did not entertain such an opinion about the Afridis as my Honourable friend has. Anyhow, I can say there was no excuse for the Afridis to complain against the conduct of the Sikhs. There was not a single pamphlet issued by any of the Sikh preachers against the Muhammadan community.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: Perhaps the name Dalip Singh, which was the name of the Judge who decided the case influenced the Afridis to think that the Sikhs were also connected with the affair.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA: I may tell my Honourable friend that the Judge who decided the case was a Christian.

THE HONOURABLE SARDAR SHIVDEV SINGH UBEROI: The tribesmen do not know that and there are also many Honourable members here who do not know that the Judge who had decided the case was a Christian. I feel I have elicited useful information from the Honourable the Foreign Secretary, namely, that it is the aim of the political officer to see that the Hindus and Sikhs are sent back to their homes. Having got that useful information, I do not feel the necessity for pressing this Resolution at all. Before I withdraw my Resolution, I would like the Honourable the Foreign Secretary to say one thing. My Honourable friend Lala Ram Saran Das asks me to enquire what reply was given to the Hindu memorial. Of course the Honourable Sir Denys Bray would be in a position to clear the point. After hearing from him on this point, I should like to withdraw the Resolution.

THE HONOURABLE SIR DENYS BRAY: Sir, I am not in a position to say what action has been taken on the Sikh memorial for I am not quite sure what memorial is referred to. I much appreciate the restraint with which the Honourable Mover spoke, and appreciate also his action in asking leave to withdraw his motion. Into the controversy between the Honourable Lala Ram Saran Das and the Honourable and gallant Member from the North-West Frontier Province I do not propose to enter. I have heard, I fear I must say, statements of detail from both the full accuracy of which I gravely doubt.

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But there was one remark that fell from my Honourable friend Lala Ram Saran Das's lips which provokes me to say one final word. He suggested, Sir, that the rules of a neighbouring country should see to it that all subjects of his that travelled up through India to his country should keep their mouths from evil speaking, lying and slandering. Sir, the answer we should receive would surely be obvious: that we should first put our own house in order. For myself, I do hope that out of this evil may come good; in dealing with Frontier problem one does well to hold fast to the practical creed and faith of optimism. But this, Sir, is the second occasion within a few years that the Frontier Province has been rent over a blasphemous pamphlet. Does not this evil cry aloud to India to purge herself once and for all of this vile and scurrilous lampooning, so alien to India, so foreign to that dignity which is India's, so opposed to that instinctive reverence for saintliness of life, that

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veneration for holy men of all creeds and castes, which the world hitherto has regarded as amongst the most kindly things in India, as amongst the lessons of tolerance which India has to give? Is it visionary to hope that, once it is realised that scurrilous and blasphemous words, lightly spoken or written down-country whether by Hindu or Muslim, may easily be translated on the Frontier into action which may wreck innocent homes and threaten the whole social system,—is it visionary to hope that outraged India will at last insist that this pestilence shall be stayed for ever?

The Resolution was, by leave of the Council, withdrawn.

THE HONOURABLE THE PRESIDENT: I understand from the Honourable the Leader of the House that Government has no business to place before the Council to-morrow. The Council will therefore now adjourn till Monday, the 12th September at 11 o'clock.

The Council then adjourned till Eleven of the Clock on Monday, the 12th September, 1927.